

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAY 1 9 2011

OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of March 30, 2011, to U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson on behalf of the Florida-based company, Zimek. Your letter requests that EPA conduct an expedited review of Zimek's label amendment application. Your letter was forwarded to me for response on behalf of EPA because my office is responsible for regulating pesticides.

My staff in the Office of Pesticide Programs have met on two occasions with Zimek and its commercial partners, to ensure the companies have a clear understanding of what is required to be submitted to EPA to achieve registration of pesticide products that can be applied using its technology for the purposes of controlling public health pests. This effort, and an ongoing, open dialogue, will help ensure a quality application and timely review of applications associated with disinfection of ambulances and similar use sites using the Zimek technology. Our ability to process an application promptly and smoothly largely rests on the quality of the data provided by the applicant and the conformance of those data to applicable regulations and policies.

The Pesticide Registration Improvement Act (PRIA) sets forth statutory application fees and associated timeframes for the Agency to render a decision on an application. As part of the Agency process to amend the pesticide registration, Zimek, and/or the companies whose products they intend to apply using their technology, would need to demonstrate that the product is effective against the target microorganisms (or pathogens) when it is applied using their equipment. Moreover, use of a mister is a new means of application for this use site, and there is no existing protocol for this type of use. The test protocol is critical to ensure the data are good and that health and science decisions are sound. These steps are important because they allow the Agency to:

- Ensure that new protocols are reviewed by external experts as well as Agency scientists so that all scientific aspects of the protocol are fully vetted prior to approval.
- Determine the hazard and routes of potential human and environmental exposures by reviewing the scientific database.
- Determine whether the product will cause any unreasonable adverse effect on human health or the environment.
- Ensure that the product as applied is effective in controlling public health pathogens in order to protect human health.

• Ensure that efficacy data generated as part of the registration process are based on a scientifically sound test protocol.

Protocol approval can typically take up to 12 months and is followed by testing using the approved protocol, data submission, and a new use application – for which PRIA allows up to another 9 months for review. Recently, a commercial partner of Zimek took the first step in the process described above by submitting a protocol to the Agency for review. We have identified this as a high priority and, as such, are expediting our review accordingly. Once the review is complete, the results will be shared with the submitter and our dialogue will continue as to what steps will need to be taken to advance the process further. EPA is committed to expediting the review of registration applications related to Zimek technology as they are submitted.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Mr. Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely.

Stephen A. Owens

Assistant Administrator

United States Senate

WASHINGTON, DC 20510

January 27th, 2010

The Honorable Lisa Jackson, Administrator U.S. Environmental Protection Agency Ariel Rios Building, Mail Code: 1101A 1200 Pennsylvania Avenue, NW Washington, DC 20460

Dear Administrator Jackson:

As newly elected Senators, we look forward to working with you in the 112th Congress. At this time, however, we are writing to echo concerns recently expressed by a bi-partisan group of 49 Senators during the 111th Congress on EPA's proposed Maximum Achievable Control Technology (MACT) rules, which affects boilers and process heaters.

We are concerned that even recently installed boilers cannot meet the requirements set forth in the proposed rule. The rule appears to be based on a "super" boiler that does not currently exist. As a result, these proposed boiler MACT rules are expected to cost billions of dollars and would put a tremendous number of jobs at risk. The manufacturing industry has been hit particularly hard by our struggling economy and while this proposal would have an effect on jobs from many sectors, manufacturers would be affected the most. In addition, the proposal's biomass standards significantly undercut the potential to use this important source of renewable energy and are at odds with the popular promotion of renewable energy sources.

EPA is tasked with protecting and enhancing our nation's air quality under the Clean Air Act, and we ask you to consider revisions to the proposed rules that will not only protect the environment, but also preserve jobs. Congress gave EPA latitude in certain areas to balance the economic impact with the health effects of such rules. We believe EPA should consider using this health-based standard to adjust their approach to Boiler MACT, which is specifically authorized by section 112(d)(4) of the Clean Air Act.

We are committed to protecting the jobs of hardworking Americans that recently elected us and we believe EPA should revise the rule to enact emissions standards that are actually achievable by real-world boilers. We support EPA's efforts to address health threats from air emissions and we are hopeful that these regulations can be crafted in a way that will benefit the environment and not harm existing jobs.

Sincere Regards,

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United States Senate

WASHINGTON, DC 20510

February 15, 2011

The Honorable Lisa Jackson Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, DC 20460

Dear Administrator Jackson:

As the 112th United States Congress commences, we write to share with you our continuing concern with the potential regulation of farm and rural dusts through your review of the National Ambient Air Quality Standards (NAAQS) for coarse particulate matter (PM10), or "dust." Proposals to lower the standard may not be significantly burdensome in urban areas, but will likely have significant effects on businesses and families in rural areas, many of which have a tough time meeting current standards.

Naturally occurring dust is a fact of life in rural America, and the creation of dust is unavoidable for the agriculture industry. Indeed, with the need to further increase food production to meet world food demands, regulations that will stifle the U.S. agriculture industry could result in the loss of productivity, an increase in food prices, and further stress our nation's rural economy.

Tilling soil, even through reduced tillage practices, often creates dust as farmers work to seed our nation's roughly 400 million acres of cropland. Likewise, harvesting crops with various farm equipment and preparing them for storage also creates dust.

Due to financial and other considerations, many roads in rural America are not paved, and dust is created when they are traversed by cars, trucks, tractors, and other vehicles. To potentially require local and county governments to pave or treat these roads to prevent dust creation could be tremendously burdensome for already cash-strapped budgets.

While we strongly support efforts to safeguard the wellbeing of Americans, most Americans would agree that common sense dictates that the federal government should not regulate dust creation in farm fields and on rural roads. Additionally, the scientific and technical evidence seems to agree. Given the ubiquitous nature of dust in agricultural settings and many rural environments, and the near impossible task of mitigating dust in most settings, we are hopeful that the EPA will give special consideration to the realities of farm and rural environments, including retaining the current standard.

Thank you for your consideration of this important matter.

Sincerely,

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

APR 1 4 2011

OFFICE OF AIR AND RADIATION

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of February 15, 2011, co-signed by 32 of your colleagues, expressing your concerns over the ongoing review of the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM). The Administrator asked that I respond to your letter.

I appreciate the importance of NAAQS decisions to state and local governments, in particular to areas with agricultural communities, and I respect your perspectives and opinions. I also recognize the work that states have undertaken to improve air quality across the country. The NAAQS are set to protect public health from outdoor air pollution, and are not focused on any specific category of sources or any particular activity (including activities related to agriculture or rural roads). The NAAQS are based on consideration of the scientific evidence and technical information regarding health and welfare effects of the pollutants for which they are set.

No final decisions have been made on revising the PM NAAQS. In fact, we have not yet released a formal proposal. Currently, we continue to develop options, including the option of retaining the current 24-hour coarse PM standard. To facilitate a better understanding of the potential impacts of PM NAAQS standards on agricultural and rural communities, EPA recently held six roundtable discussions around the country. This is all part of the open and transparent rulemaking process that provides Americans with many opportunities to offer their comments and thoughts. Your comments will be fully considered as we proceed with our deliberations.

Under the Clean Air Act, decisions regarding the NAAQS must be based solely on an evaluation of the scientific evidence as it pertains to health and environmental effects. Thus, the Agency is prohibited from considering costs in setting the NAAQS. But cost can be - and is - considered in developing the control strategies to meet the standards (i.e., during the implementation phase). Furthermore, I want to assure you that EPA does appreciate the importance of the decisions on the PM NAAQS to agricultural communities. We remain committed to common sense approaches to improving air quality across the country without placing undue burden on agricultural and rural communities.

Again, the Administrator and I thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

Gina McCarthy

Assistant Administrator

Congress of the United States Washington, DC 20515

March 5, 2012

The Honorable Lisa Jackson Administrator United States Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, DC 20450

Dear Administrator Jackson:

As members of the Florida Congressional delegation we write to respectfully request your prompt review and approval of the Florida Department of Environmental Protection's (FDEP) numeric nutrient criteria rule. The rule that you have received reflects months of extraordinarily hard work by many individuals in the state to ensure that it could be approved as soon as it was submitted to your agency. Based on sound science and years of research, the rule reflects the views of stakeholders, environmental regulators, the Florida Environmental Regulation Commission and finally the Florida Legislature. The rule was approved unanimously by the Florida legislature and signed by Governor Scott on February 16, 2012.

FDEP's rule has strong scientific underpinnings and will protect the unique and critical water bodies of our state. It is specifically designed to protect lakes, streams, and estuaries from nutrient pollution without inflicting unnecessary costs and hardships on Floridians. We are all in agreement that Florida needs strong regulatory protection for its waters that should be in conjunction with, not against, the needs of the consumer and our industries. The FDEP rule does an admirable job of considering all factors and protecting our waters.

EPA officials have stated on numerous occasions that it would prefer States, including Florida, to establish their own water quality standards. Florida has delivered on its responsibilities and we ask that as quickly as possible you review and approve the rule in its entirety as it was approved by the legislature and signed by our Governor.

Sincerely,

Thomas J. Rooney

Member of Congress

Marco Rubio

United States Senator

Member of Congress

Gus Bilirakis Member of Congress

Member of Congress

Ander Crenshaw Member of Congress

ed Deutch

Member of Congress

Alcee L. Hastings Member of Congress

John Mica Member of Congress

Member of Congress

Member of Congress

Mario Diaz-Balart

Member of Congress

onnie Mack Connie Mack

Member of Congress

Richard Nugent
Member of Congress

David Rivera Member of Congress

Dennis Ross Member of Congress

Cliff Medrns
Member of Congress

C.W. Bill Young Member of Congress Bill Posey
Member of Congress

Ileana Ros-Lehtinen Member of Congress

Steve Southerland Member of Congress

Daniel Webster

Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

APR 1 8 2012

OFFICE OF WATER

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of March 5, 2012, from the Florida Congressional delegation requesting that the Environmental Protection Agency (EPA) promptly review and approve the Florida Department of Environmental Protection's (FDEP) numeric nutrient criteria rule.

You note that the Florida legislature and Governor Scott have completed necessary legislative ratification of the numeric nutrient criteria rule and directed the FDEP to submit the rule to the EPA for review. On February 20, 2012, the FDEP sent the rule to the EPA, which sets numeric nutrient criteria for lakes, spring vents, streams, and certain estuaries in Florida, as well as material supporting those criteria.

We understand that an administrative challenge was filed on the proposed rules and that the Administrative Law Judge is not expected to issue an order with regard to the proceedings until April or May 2012. We also understand that, depending on the resolution of the challenge, the rule may then be sent to the Florida Secretary of State for final adoption.

We have begun an informal review of the information submitted by the FDEP. When we receive notification from the state of Florida that the rule has been officially adopted as revisions to the State's water quality standards, we can begin our formal review pursuant to section 303(c) of the Clean Water Act.

We look forward to working with the FDEP as we conduct our review. If you have further questions, please contact me or your staff may call Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4836.

Sincerely,

Nancy K. Stoner

Acting Assistant Administrator

United States Senate

WASHINGTON, DC 20510

May 24, 2011

The Honorable Lisa Jackson Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, DC 20460

Dear Administrator Jackson:

We are writing to express our concerns with the outdoor criteria of the WaterSense Single Family New Homes Specification finalized in December 2009. While the WaterSense specifications were developed with the laudable goals of promoting water efficiency and improving the environment, it is our understanding that the WaterSense outdoor criteria, specifically the turf limitations, fall short of these goals. We also further understand that, as drafted, these criteria will have significant economic impacts. Therefore, we respectfully request that you reconsider these criteria in the WaterSense program.

Unlike the indoor criteria, which focus on the use of labeled WaterSense products, the outdoor criteria center on a subjective, one-size-fits-all 40% turf restriction and a complex and inadequate water budget. We have several concerns with these outdoor criteria. First, the turf limitation ignores the many positive environmental attributes of turf, including oxygen creation, carbon sequestration, storm water run-off abatement, and ambient temperature reduction among others. Secondly, anyone who chooses to use the water budget formula will find no relief due to its complexity. Furthermore, the water budget formula results in an outcome skewed by the biases that underlie the turf limitation in the first place. Finally, it is our understanding that the environmental benefits of the turf limitations are not only questionable, but the limitations will also result in the elimination of a substantial number of jobs in the fields of landscape installation and maintenance, something our economy can ill afford.

Given these concerns, we respectfully request that you review the outdoor criteria of the WaterSense New Single Family Homes Specification. In doing so, we encourage you to remember the dual environmental and economic objectives of the WaterSense program. To that end, we also request that you provide to us detailed information as to how you have or will account for the economic implications of any turf limitations in the program to the landscape installation and maintenance industry.

We look forward to your prompt response.

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cc: Karen Mills, Small Business Administration



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUN 2 2 2011

OFFICE OF WATER

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of May 24, 2011, to Lisa Jackson, Administrator of the Environmental Protection Agency (EPA). Your letter conveyed concerns about the EPA WaterSense program's *Water-Efficient Single-Family New Home Specification*. As always, we welcome the input of members of Congress.

The WaterSense program is an entirely voluntary, market-enhancement program designed to spur investment and innovation in water-efficient technologies and programs. Because it is voluntary in nature, industry and stakeholders may choose to participate if they believe that it will provide a market advantage to them to be more water-efficient or to design more high-performing, water-efficient products. Those products, programs, or new homes that meet EPA's specifications may bear the WaterSense label. The label, in turn, helps the public make informed decisions when seeking to make water-efficient purchasing decisions.

The WaterSense specification offers builders two flexible options for landscaping water-efficient new homes. The first option allows builders to customize their landscape to local climates and conditions because it is based on local evapotranspiration rates, which take into account regional climate and local precipitation averages, as well as the needs of whichever plant types the builder/landscaper chooses. The turf allocation under this option varies for each home, depending on where the home is located and the type of turf installed, among other factors. The second option, planting a maximum of 40 percent turf, likewise allows and encourages flexibility in landscaping the other 60 percent of the yard. It is important to note that the 40 percent option generally applies only to the front yard of the home.

Our understanding is that the majority of homes that have been labeled to date used the water budget tool in designing their landscape to meet the outdoor criteria. However, we understand that the spreadsheet format of the tool is not as user-friendly as it could be. To address this concern, WaterSense is developing an on-line version for release later this year which will be much easier to use.

Addressing outdoor water use is critical to defining a water-efficient home and to the success of the program because outdoor water use represents a large proportion of residential water use. On average, single-family homes in this country use 30 percent of their water outdoors. In some areas of the country it is as high as 70 percent. Certainly in Florida, where you are seeing the effects that drought can have on local water supplies, a landscape that can withstand such conditions will reduce demand on the supply required to meet basic community needs. Efficient irrigation design and appropriate plant selection will

ensure that homes bearing the WaterSense label are efficient both indoors and outdoors. To further support outdoor efficiency, EPA will later this year release a highly anticipated final WaterSense specification for weather-based irrigation controllers.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Pamela Janifer, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-6969.

Sincerely,

Nancy K. Stoner

Acting Assistant Administrator

United States Senate

WASHINGTON, DC 20510

July 26, 2011

The Honorable Lisa P. Jackson, Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, DC 20460-0001

Dear Administrator Jackson:

We write to you out of concern regarding a proposed rule by the U.S. Environmental Protection Agency (EPA) to require power plants and other industrial and manufacturing facilities to minimize the impacts associated with the operation of cooling water intake structures (CWIS), as published in the *Federal Register* on April 20, 2011. Given the economic, environmental, and energy impacts this proposed rule could have, we urge the EPA to take a measured approach to this rulemaking in order to ensure sufficient flexibility and that any costs imposed by the requirements in the final rule are commensurate with the likely benefits.

Section 316(b) of the Clean Water Act (CWA) requires CWIS to reflect the best technology available for minimizing adverse environmental impact. For more than thirty years, the EPA and state governments have applied this requirement on a site-by-site basis, examining the impacts of CWIS on the surrounding aquatic environment.

As such, the proposed rule appropriately gives state governments the primary responsibility for making technology decisions regarding how best to minimize the entrainment of aquatic organisms at affected facilities, an approach which recognizes the importance of site-specific factors. A site-by-site examination of aquatic populations, source water characteristics, and facility configuration and location is vital in determining any environmental impacts, the range of available solutions, and the feasibility and cost-effectiveness of such solutions.

Unfortunately, the EPA has not adopted a similar approach to minimizing the impacts of impingement, but rather, is proposing uniform national impingement mortality standards. This approach to impingement sets performance and technology standards not demonstrated to be widely achievable and likely unattainable for many facilities. This method also takes away the technology determination from state governments and ignores the impingement reduction technologies already approved by these states as the best technology available.

And in so doing, the EPA has proposed a rule costing more than twenty times the estimated benefits – according to its very own estimate. This is notable considering the cost estimate does not include the cost of controls to address entrainment.

As an alternative, we believe the rule should give state environmental regulators the discretion to perform site-specific assessments to determine the best technology available for addressing both

impingement and entrainment together. This approach stands in stark contrast to a national one-size-fits-all approach and allows a consideration of factors on a site-by-site basis. We feel this would provide consistency and give permitting authorities the ability to select from a full range of compliance options to minimize adverse environmental impacts, as warranted, while accounting for site-specific variability, including cost and benefits. Furthermore, we believe the EPA should focus on identifying beneficial technology options, rather than setting rigid performance standards; and the EPA should not define closed-cycle cooling to exclude those recirculating systems relying on man-made ponds, basins, or channels to remove excess heat.

Given the proposed rule's potential to impact every power plant across our country, an inflexible standard could result in premature power plant retirements, energy capacity shortfalls, and higher energy costs for consumers. Therefore, we urge you to use the flexibility provided by the Supreme Court and the Presidential Executive Order on regulatory reform, E.O. 13563, Improving Regulation and Regulatory Review, and modify the proposed rule to ensure that any new requirements will produce benefits commensurate with the costs involved and maximize the net benefits of the options available.

Thank you for your consideration of our request. We look forward to your response.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

SEP - 2 2011

OFFICE OF WATER

The Honorable Marco Rubio United States Senate Washington, DC 20510

Dear Senator Rubio:

Thank you for your letter of July 26, 2011, regarding the proposed regulation on cooling water intakes. Your concerns over potential economic, environmental, and energy impacts echo the concerns we are hearing from others during the public comment period.

Our goal was, and continues to be, a process that results in a common-sense and cost-effective approach to protecting aquatic life without sacrificing electricity services on which households and businesses across the country depend. I have strived to take a measured approach to this proposal by establishing a strong baseline level of protection, and then allowing states the primary responsibility to develop additional safeguards for aquatic life through a rigorous site-specific analysis. This approach allows states to consider technologies already employed by facilities, to address site-specific water characteristics and facility configuration, and to perform best technology available assessments by a process under which factors such as costs and benefits may be considered. Several of your specific comments on the proposed approach have resonated with us. For example, you mention the need for a more flexible approach to the impingement standard. Others have expressed a similar concern, and we have already had productive stakeholder discussions about alternatives.

The EPA is proposing these standards to meet its obligations under the Clean Water Act pursuant to a recent settlement agreement with environmental groups whereby the EPA agreed to issue a final decision by July 2012. When the Agency takes final action we will be providing the public and our regulated stakeholders with the regulatory certainty they have lacked for 30 years, and that certainty – in conjunction with the considerable flexibility our federal regulation provides to states – will allow regulated stakeholders to make sound investment decisions, and hasten our economic recovery.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Greg Spraul in EPA's Office of Congressional and Intergovernmental Relations at 202-564-0255.

Sincerely,

Nancy K. Stone

Acting Assistant Administrator

United States Senate

WASHINGTON, DC 20510

June 30, 2011

The Honorable Lisa P. Jackson Administrator United States Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, DC 20004 The Honorable Jo-Ellen Darcy
Office of the Assistant Secretary (Civil Works)
Department of the Army
108 Army Pentagon
Washington, DC 20310

Dear Administrator Jackson and Assistant Secretary Darcy:

On May 2, 2011 the Environmental Protection Agency and the Army Corps of Engineers (the Agencies) published in the Federal Register (76 Fed. Reg. 24479) a request for comments on draft guidance relating to the identification of waters protected under the Clean Water Act (CWA).

We have a great deal of concern about the actions that the Agencies are pursuing. The Agencies claim that this guidance document is simply meant to clarify how the Agencies understand the existing requirements of the CWA in light of the current law, regulations, and Supreme Court cases. More than clarifying, they greatly expand what could be considered jurisdictional waters through a slew of new and expanded definitions and through changes to applications of jurisdictional tests. This guidance document improperly interprets the opinions of the plurality and Justice Kennedy's opinion in *Rapanos v. United States* by incorporating only their expansive language in an attempt to gain jurisdictional authority over new waters, while ignoring both justices' clear limitations on federal CWA authority. Attached are highlights of several specific issues regarding the draft guidance document.

The decision to change guidance, just a few short years after the Agencies issued official guidance on the exact same issue, has not been prompted by any intervening changes to the underlying statute through legislation or a new Supreme Court decision. Further, we understand that the Agencies intend this draft guidance to be the first step toward a formal rulemaking in the future. Because the Agencies' intent is to turn the draft interim guidance into regulations, it can only be interpreted to mean that they intend the guidance to be followed. Following the guidance will change the rights and responsibilities of individuals under the CWA – this is clearly the regulatory intent.

In the economic analysis completed by the Agencies, it was determined that as few as 2% or as many as 17% percent of non-jurisdictional determinations under current 2003 and 2008 guidance would be considered jurisdictional using the expanded tests under the draft guidance.² Any change in jurisdiction which results in a change to the rights and responsibilities of a land owner is, in fact, a change in the law as the program has been implemented to date.

Further, the draft guidance is intended to apply to more jurisdictional interpretations than just those covered by the Army Corps in making §404 determinations, but also those under §402 that governs

¹ 547 U.S. 715 (2006)

² "Potential Indirect Economic Impacts and Benefits Associated with Guidance Clarifying the Scope of Clean Water Act Jurisdiction." April 27, 2011 http://water.epa.gov/lawsregs/guidance/wetlands/upload/cwa_guidance_impacts_benefits.pdf

Jackson, Darcy June **30**, 2011 Page 2

National Pollution Discharge Elimination System permits, §311, oil spills and SPCC plans, §303, water quality standards and TMDLs and §401 state water quality certifications. Because most states have delegated authority under many of these sections, this change in guidance will also result in a change in the responsibilities of states in executing their duties under the CWA. While we question seriously the need for this new guidance and believe that the Agencies lack the authority to rewrite their jurisdictional limitations in this manner, one thing is clear: it is fundamentally unfair to the States and the regulated community (including our nation's farmers and other property owners) to subject lands and waters under their control to a change in legal status of this magnitude via a "guidance document." Changes in legal status should only be done, if at all, through the regulatory process, specifically under the Administrative Procedure Act, subchapter II of chapter 5, and chapter 7, of title 5, United States Code.

Because the draft guidance will substantively change how the Agencies decide which waters are subject to federal jurisdiction and will impact the regulated community's rights and obligations under the CWA, this guidance has clear regulatory consequences and goes beyond being simply advisory guidelines. The draft guidance will shift the burden of proving jurisdictional status of waters from the Agencies to the regulated communities, thus making the guidance binding and fundamentally changing the legal rights and responsibilities that they have. When an agency acts to change the rights of an individual, we believe that the agency must go through the formal rulemaking process.

We respectfully request you abandon any further action on this guidance document.

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Jackson, Darcy June 30, 2011 Jackson, Darcy
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Jackson, Darcy June 30, 2011 Page 5

Highlights of Concerns

The following are a selection of the concerns we have with the draft guidance.

Interstate waters:

The Agencies' have added language to their definition of interstate waters explicitly directing field staff to use "other waters" that lie across state boundaries for jurisdictional determinations. "Other waters" include: "intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds." "Other waters" are now elevated to the same level as "navigable waters" for the purposes of determining whether or not waters are jurisdictional. Thus a geographically isolated prairie pothole that happens to be situated on a state boundary would be jurisdictional and could allow for a jurisdictional claim to be made on all other wet areas that have a "significant nexus" to the pothole. This new definition clearly goes beyond the current understanding expands the Agencies reach to previously non-jurisdictional waters.

Significant Nexus:

The new guidance makes substantial changes to what is considered a "significant nexus." Justice Kennedy's opinion in *Rapanos* stated that wetlands that have a "significant nexus" to traditional navigable waters are "waters of the United States:" "if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical and biological integrity of other covered waters more reading understood as 'navigable.'" ³ Previous guidance read Justice Kennedy's language to apply to wetlands and limited the significant nexus tributaries to their higher order streams reach.

The new guidance eliminates the reach concept and applies the significant nexus test to all tributaries, wetlands, and proximate other waters that are "in the same watershed." Currently "other waters" are determined to be jurisdictional based on conditions that show their connections to interstate commerce. Additionally, waters may be aggregated and considered together, and if the category of water or wetland is determined to have a significant nexus to downstream waters, then each water or wetland in that category is considered a jurisdictional water of the United States.

The draft interim guidance dictates that determining what tributaries, wetlands, and other waters will have a "significant nexus" includes an analysis of the functions of waters to determine if they trap sediment, filter pollution, retain flood waters, and provide aquatic habitat. A significant nexus is based on both hydrological and ecological effects. A hydrological effect does not require a hydrological connection. The ability to hold water is considered an effect on downstream waters because that function arguably reduces the chances of downstream flooding. Furthermore effects on the chemical integrity of a water body on downstream waters could be reason for asserting jurisdiction, because it could show the ability to reduce the amount of pollutants that would otherwise enter a traditionally navigable water or interstate water. Biological effects include the capacity to transfer nutrients to downstream food webs or providing habitat for species that live part of their lives in downstream waters. Under this interpretation, an isolated water body can be considered to have a significant nexus to downstream waters. Again, if the category of water or wetland is determined to have a significant nexus to downstream waters, then each similarly situated water or wetland is considered jurisdictional.

"Significant nexus" is defined as any relationship that is "more than speculative or insubstantial." This is not the same as requiring a nexus actually be significant. Again, because of the expansive nature of what can be included under the "significant nexus," the draft interim guidance is likely to encompass far more waters than have been previously included. The increased scope not only of "significant nexus," but of

³ 547 U.S. 715, 780 (2006)

Jackson, Darcy June 30, 2011 Page 6

what waters may be tested using this test, will likely allow the Agencies to assert jurisdiction far beyond current practice.

Tributaries and Ditches:

Like interstate waters, tributaries are considered jurisdictional under the Agencies' regulations, but do not have the extensive new definition given in this guidance. A tributary now has the physical definition of the presence of a channel with a bed and an ordinary high water mark. Additionally ditches, which were generally excluded under the current guidance, have been included as tidal ditches or non-tidal ditches newly defined as meeting one of the following: (1) the ditch is an altered natural stream, (2) the ditch was excavated in a water or wetland, (3) the ditch has relatively permanent flowing or standing water, (4) the ditch connects two or more jurisdictional waters, or (5) the ditch drains natural water bodies, such as a wetland, into a tributary system of a navigable or interstate water. The new standards for asserting jurisdiction over ditches utilize both the plurality opinion and the Kennedy significant nexus test. As the draft interim guidance asserts, many previously non-jurisdictional ditches will likely be deemed jurisdictional.

The plurality opinion was clear that the Agencies' assertion of jurisdiction over ditches and ephemeral waters was incorrect. However, the draft interim guidance document allows the Agencies to use the plurality standard as a basis for asserting jurisdiction over ditches. Furthermore, the use of the Kennedy standard for asserting jurisdiction over tributaries ignores the fact that Kennedy was skeptical about the Agencies use of an ordinary high water mark as a presumption for asserting jurisdiction. While more detailed than previous guidance, the effect is the same: nearly everything that connects to a navigable water is jurisdictional. Both the plurality opinion and Kennedy rejected this assertion in *Rapanos*.



Fw: New Control Denis Borum to: Cassaundra Eades

07/05/2011 05:59 PM

Sandy,

Here are the names:

James M. Inhofe
Pat Roberts
Mitch McConnell
Lisa Murkowski
Lamar Alexander
Mike Crapo
Thad Cochran
Jeff Sessions
Mike Johanns
Richard G. Lugar
David Vitter
John Barrasso

Roger F. Wicker Jon Kyl

Chuck Grassley

John Cornyn

Tom Coburn

Orrin G. Hatch

Johnny Isakson

Marco Rubio

Ron Johnson

James E. Risch

Jerry Moran

Patrick J. Toomey

Rand Paul

Saxby Chambliss

Rob Portman

Daniel Coats

Kay Bailey Hutchison

Jim DeMint

John Thune

Bob Corker

Dean Heller

Richard C. Shelby

John Boozman

Mike Lee

Michael B. Enzi

Roy Blunt

Richard Burr

John Hoeven

Lindsey Graham

---- Forwarded by Denis Borum/DC/USEPA/US on 07/05/2011 09:38 AM -----

From:

Denis Borum/DC/USEPA/US

To:

Cassaundra Eades/DC/USEPA/US@EPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

SEP 3 0 2011

OFFICE OF WATER

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of June 30, 2011, to the U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson and Assistant Secretary of the Army for Civil Works (Army) Jo-Ellen Darcy regarding draft guidance clarifying the definition of "waters of the United States (WUS)." I understand your interest in the significant issues associated with the geographic scope of the Clean Water Act (CWA), which are so central to the Agency's mission of assuring effective protection for human health and water quality for all Americans. As the senior manager for the EPA's national water program, I appreciate the opportunity to respond to your letter.

Recognizing the importance of clean water and healthy watersheds to our economy, environment, and communities, on April 27, 2011, the EPA and the U.S. Army Corps of Engineers (Corps) released draft guidance that would update existing policies on where the CWA applies. I want to emphasize that this guidance was issued in draft and is not in effect. The agencies published the draft guidance in the *Federal Register* on May 2, 2011, and extended the public comment period until July 31, 2011. The guidance will not be made final until the EPA and the Corps review these comments and make any revisions to the guidance after careful consideration of all public input.

It is also important to clarify that the draft guidance would not change existing requirements of the law nor increase the geographic scope of waters currently authorized under the law and interpreted by the Courts. The extent of waters covered by the Act remains significantly less than the scope protected under the law prior to Supreme Court decisions in *SWANCC* and *Rapanos*, and the agencies' guidance cannot change that. We believe that guidance will be helpful in providing needed improvements in the consistency, predictability, and clarity of procedures for conducting jurisdictional determinations, without changing current regulatory or statutory requirements, and consistent with the relevant decisions of the Supreme Court.

I share your interest in proceeding with an Administrative Procedure Act rulemaking as soon as possible to modify the agencies' regulatory definition of the term "waters of the United States" to reflect the Supreme Court decisions in *SWANCC* and *Rapanos*. Rulemaking assures an additional opportunity for the states, the public, and stakeholders to provide comments on the scope and meaning of this key regulatory term.

Clean water provides critical health, economic, and livability benefits to American communities. Since 1972, the CWA has kept billions of pounds of pollution out of American waters, and has doubled the number of waters that meet safety standards for swimming and fishing. Despite the dramatic progress in restoring the health of the Nation's waters, an estimated one-third of American waters still do not meet the swimmable and fishable goals of the CWA. Additionally, new pollution and development challenges threaten to erode our gains, and demand innovative and strong action in partnership with Federal agencies, states, and the public to ensure clean and healthy water for American families, businesses, and communities. The EPA and the Corps look forward to working with the public, our federal and state partners, and Congress to protect public health and water quality, and promote the nation's economic security.

I appreciate the opportunity to respond to your letter. I hope you will feel free to contact me if you have additional questions or concerns, or your staff may call Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4836.

Sincerely,

Vancy K. Stoner

Acting Assistant Administrator

United States Senate

WASHINGTON, DC 20510

June 27, 2011

The Honorable Lisa Jackson Administrator Environmental Protection Agency Ariel Rios Building 1200 Pennsylvania Avenue, N.W. Washington, DC 20460

Dear Administrator Jackson,

We are writing to you today with our concerns regarding the implementation timeline for the Oil Spill Prevention, Control and Countermeasure (SPCC) rule for farmers.

First we would like to thank you for finalizing the exemption of milk and milk product containers from the SPCC rule on April 12, 2011. We appreciate your attentiveness to the feedback you received from the agriculture community. We also appreciate your willingness to prevent the unintended consequences of the SPCC regulations, which would have placed a tremendous burden on the agricultural community.

We are writing to you today with our concerns regarding the implementation timeline for the SPCC rule for farmers. As you know, last year the EPA proposed extending the compliance date under the SPCC rule to November of 2011. We applaud EPA's current extension for farms that came into business after August of 2002. We also appreciate the efforts of EPA and USDA to inform farmers about the new guidelines -- in particular, USDA's new pilot initiative to help producers comply with the new SPCC rule. However, we remain concerned that EPA has not yet undertaken the outreach necessary to ensure that all farms have sufficient opportunity to meet their obligations under the regulation.

SPCC regulations are applicable to any facility, including farms, with an aggregate above-ground oil storage capacity of 1,320 gallons in tanks of 55 gallons or greater. To comply with this rule, farms where there is a risk of spilled oil reaching navigable waters may need to undertake costly engineering services, as well as infrastructure improvements, to assure compliance with the regulation. Despite setting stringent standards, the EPA has done little to make sure small farms can meet the requirements set forth in the SPCC rule.

We strongly believe farmers want to be in compliance with the rule, but in order to do so they will need a longer period during which EPA undertakes a vigorous outreach effort with the agricultural community. Currently, the farming community in many instances lacks access to Professional Engineers (PEs). We have heard from many farmers who cannot find PEs willing or able to work on farms. In some states, no qualified professional engineers have even registered to provide SPCC consultation. In others, fewer than five have registered. Without access to PEs, it will be impossible for farmers to become SPCC compliant.

Recently released draft guidance on waters of the United States by the EPA and the U.S. Army Corps of Engineers also appear to dramatically expand the agencies' authority with regard to which waters and wetlands are considered "adjacent" to jurisdictional "waters of the United States" under the Clean Water Act. Many farm and ranch families are worried that this guidance could now force them to comply with the SPCC rule, with very little time to do so. Additionally, the delay of compliance assistance documentation has put farmers far behind the curve in preparing for compliance. Had the information and documentation been available before the January grower meetings, the compliance process could have begun before the time intensive growing season.

Furthermore, EPA still needs to clarify exactly who is responsible for holding and maintaining the plan, as many farms are operated by people who do not own the land. EPA also needs to clarify how it plans to enforce the rule.

The last thing we want is for confusion or an overly burdensome rule to disincentivize compliance. Many farmers do not keep their tanks full during the entire year, and we have already heard from associations whose members are considering decreasing the size of their tanks so they will not be subject to SPCC compliance. This could eliminate their ability to buy fuel in bulk, thus increasing their costs and the costs of food production.

Small family farms have a natural incentive to prevent any possible oil spills on their property. No one wants more oil spills. In fact, the last people who want to spill oil are family farm owners. The impact of dealing with a costly clean-up could be devastating to the finances of a small farm.

We respectfully request that you re-consider the implementation deadline, continue to dialogue with the agricultural community to answer their questions, and ensure that the rule is not overly burdensome or confusing. We believe this will help avoid the rule's unintended consequences. We appreciate your attention to this important matter.

Sincerely,

James M. Inhofe

United States Senator

United States Senator

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THOMAS R. CARPER, DELAWARE
FRANK R. LAUTENBERG, NEW JERSEY
BERNARD SAMDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
JEPF MERKLEY, ORBEON
KRISTEN GILLBRAND, NEW YORK

JAMES M. INHOFE, OKLAHOMA DAVID VITTER, LOUBIANA JOHN BARRASSO, WYOMING JEFF SESSIONS, ALABAMA MIKE CHAPO, IDAHO LAMAR ALEXANDER, TENNESSEE MIKE JOHANNS, NEBRASKA JOHN BOOZMAN, ARKANSAS

BETTINA POIRIER, MAJORITY STAFF DIRECTOR BUTH VAN MARK, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

January 20, 2011

The Honorable Lisa Jackson Administrator U.S. Environmental Protection Agency Ariel Rios Building 1200 Pennsylvania Avenue, N.W. Washington, DC 20460

Dear Administrator Jackson:

On December 8, 2011, EPA released the draft report on Region 8's two year investigation of groundwater near Pavillion, Wyoming. This draft report contains preliminary findings that have given rise to tremendous controversy as this is the first time a federal agency has inferred that hydraulic fracturing is the likely cause of groundwater contamination.

EPA has indicated that it is prepared to move forward with a peer review of the draft report. despite the many concerns raised regarding the inadequacy of the quantity and quality of data and the delay in developing additional information. We ask that the agency fully address the problems that have been identified by the State of Wyoming and others, including data gaps and the timing and process of all evaluations, reviews, and conclusions prior to initiating the peer review process. Because of the significance of this report, and the potential impacts on regulatory decision making, other EPA assessments, and a large sector of the economy, it is critical that adequate and appropriate samples and data are collected and carefully reviewed before any final reviews or actions are taken. Furthermore, it is imperative that any analysis be based on the complete and best available science.

As EPA proceeds, we ask that this investigation be considered a highly influential scientific assessment and that any related, generated report is subject to the most rigorous, independent, and thorough external peer review process.

OMB's "Final Information Quality Bulletin for Peer Review" states that a scientific assessment is considered "highly influential" if the agency or the OIRA Administrator determines that the dissemination could have a potential impact of more than \$500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest. The information generated in this investigation satisfies all these requirements.

http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-03.pdf

First, the potential economic impact of this investigation is certainly more than the \$500 million threshold. Natural gas development is estimated to contribute hundreds of billions of dollars to the United States economy, and hydraulic fracturing is estimated to be used in almost 90% of gas wells drilled today. Any assessment linking hydraulic fracturing with drinking water contamination will have a clear economic impact on the natural gas development industry, natural gas users, and other economic sectors. Additionally, given the extensive media involvement initiated by EPA, it appears that the methods developed in the report could form the basis for national testing and monitoring and result in compliance requirements for virtually every well.

Also, this information is not only novel, but also controversial, as well as precedent setting. The draft report's supposition that the groundwater contamination contains compounds associated with gas production, including hydraulic fracturing, is the first time that a federal agency has posed a connection between hydraulic fracturing and groundwater contamination. In addition, the draft report has generated a tremendous amount of controversy among those in favor of and against natural gas development, and its testing methodologies and the quantity of data collected have been called into question by Wyoming state officials, industry experts, and others.³ Moreover, as a part of its hydraulic fracturing study, EPA is currently conducting separate investigations of five retroactive sites where complaints of groundwater contamination are believed to be caused by hydraulic fracturing, which we view as precedent setting.

Finally, this investigation will have significant interagency interest. The Department of Energy⁴ and the Department of Interior⁵ are both engaged in the study and potential regulation of hydraulic fracturing. In addition, agencies like the Centers for Disease Control and Prevention⁶ and the U.S. Securities and Exchange Commission⁷ have expressed interest in further study of hydraulic fracturing or disclosure.

Any peer review for this investigation, therefore, should be external, independent, rigorous, and thorough. The OMB peer review bulletin applies stringent peer review requirements to highly influential scientific assessments. The Agency "must ensure that the peer review process is transparent by making available to the public the written charge to the peer reviewers, the peer reviewers' names, the peer reviewers' report(s), and the agency's response to the peer reviewers' report(s)... This Bulletin requires agencies to adopt or adapt the committee selection policies employed by the National Academy of Sciences (NAS)." EPA's own peer review policy states that for highly influential scientific assessments, external peer review is the expected procedure, and for influential scientific assessments, external peer review is the approach of choice.

² http://www.prnewswire.com/news-releases/anga-statement-on-the-ihs-shale-gas-economic-study-135202123.html

http://trib.com/news/state-and-regional/epa-report-pavillion-water-samples-improperly-tested/article_99512ef4-6d23-5c9b-9038-c676eedd33c2.html

http://www.shalegas.energy.gov/

⁵ http://www.doi.gov/news/doinews/Forum-on-Natural-Gas-Hydraulic-Fracturing-on-Public-Lands.cim

⁶ http://fuelfix.com/blog/2012/01/05/cdc-scientist-tests-needed-on-gas-drilling-impact/

² http://online.wsj.com/article/SB10001424053111904009304576528484179638702.html

http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-03.pdf

http://www.epa.gov/peerreview/pdfs/peer_review_policy_and_memo.pdf

Thank you for your attention to this matter. We look forward to EPA continuing this investigation in close coordination with the State of Wyoming, while using the highest scientific standards, following the OMB memoranda on information quality and peer review, and ensuring that complete data is subject to an external, rigorous, and independent peer review process.

Sincerely,

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

OFFICE OF
RESEARCH AND DEVELOPMENT

The Honorable Marco Rubio United States Senate Washington, DC 20510

Dear Senator Rubio:

Thank you for your letter of January 20, 2012, to Lisa P. Jackson, Administrator of the U.S. Environmental Protection Agency, concerning the Agency's investigation of ground water contamination in Pavillion, Wyoming. Specifically, you raised concerns about the data used as a basis for the conclusions in the draft report, and asked that the investigation be considered a Highly Influential Scientific Assessment (HISA). Your letter was referred to me because of the Office of Research and Development's role in conducting the investigation with EPA Region 8 and in arranging the peer review.

Data quantity and quality issues. You expressed concerns about the quantity and quality of data, and suggested that additional data should be collected and reviewed before any final reviews or actions are taken. The EPA stands behind the quality and reliability of our data. Extensive data have been collected and analyzed since the investigation began in 2009. Much of this information was shared with the State of Wyoming, the Tribes, Encana, and other interested parties before the draft report was released, and all of the laboratory and field data are publicly available on the EPA website. ¹

The Agency agrees that it would be beneficial to conduct additional sampling of the wells along with other studies to fill data gaps. On March 8, 2012, Wyoming Governor Mead, the Northern Arapaho and Eastern Shoshone Tribes, and EPA Administrator Jackson issued a joint statement indicating that the Agency will partner with the State and the U.S. Geological Survey (USGS), in collaboration with the Tribes, to conduct another round of sampling of the EPA's deep monitoring wells in the Pavillion area. The EPA also plans to resample the domestic wells in closest proximity to the monitoring wells. To ensure that the results of the additional testing are available for the peer review process, the EPA is delaying the meeting of the peer review panel until the new data from USGS and the EPA are publicly available. In addition, the EPA is extending the public comment period on the draft report through October 2012.

Peer review and classification of the draft report. Regarding the peer review and the classification of this investigation, the EPA has been clear from the outset that the peer review of the draft report will be conducted in a scientifically rigorous manner by an independent group of experts. The EPA has classified the draft report as "Influential Scientific Information" (ISI). According to the Office of Management and Budget (OMB), ISI is defined as "scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private

¹ http://www.epa.gov/region8/superfund/wy/pavillion/

sector decisions." The EPA Peer Review Handbook describes ISI as having characteristics such as establishing a significant precedent, addressing a significant controversial issue, focusing on significant emerging issues, or having significant interagency implications. The draft EPA report clearly meets these and other ISI criteria. The EPA has determined that because the Pavillion investigation is a single study with the characteristics of ISI, rather than a broader assessment that involves an evaluation of a body of scientific or technical knowledge (as defined by OMB), it is best characterized as ISI.

However, in recognition of the high profile of this investigation, the Agency is treating the draft report as if it is a HISA for the purpose of peer review. The Agency will convene a balanced and independent panel of reviewers with the appropriate disciplinary expertise. Candidate reviewers will be carefully screened to avoid the selection of individuals with a real or perceived conflict of interest. In the spirit of transparency, the public has been invited to nominate reviewers and submit written comments on the draft report. The public will also be able to attend a public meeting where oral presentations on scientific issues can be made to the peer reviewers. By providing an opportunity for the public to offer comments on the draft charge to the reviewers, the EPA has gone one step beyond the HISA requirement of simply making the final peer review charge publicly available.

In closing, I would like to emphasize that the EPA has used a scientifically sound investigative approach in responding to the concerns expressed by homeowners in the Pavillion area about possible contamination of their wells. We have taken great care in analyzing the data and reaching the conclusions presented in the draft report. Transparency has been a hallmark of our efforts since the earliest stages of the investigation, and we will continue to operate in a transparent manner through the peer review and in any additional work that may be undertaken in Pavillion. Finally, we fully recognize the value of a rigorous and independent peer review, and we are implementing such a process. The EPA is committed to upholding the public trust by ensuring that the final report meets the expected standards of the scientific and technical community.

Again, thank you for your letter. If you have any further questions, please contact me or your staff may contact Pamela Janifer in the EPA's Office of Congressional and Intergovernmental Relations at 202-564-6969.

Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAR 1 3 2012

OFFICE OF SOLID WASTE AND **EMERGENCY RESPONSE**

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

The U.S. Environmental Protection Agency's (EPA) Superfund program will be proposing to add the Fairfax St. Wood Treaters site, located in Jacksonville, Florida, to the National Priorities List (NPL) by rulemaking. In addition, the EPA is adding the Continental Cleaners site, located in Miami, Florida, to the NPL. The EPA received governor/state concurrence letters supporting the listing of these sites on the NPL. Listing on the NPL provides access to federal cleanup funding for the nation's highest priority contaminated sites.

Because the sites are located within your state, I am providing information to help in answering questions you may receive from your constituency. The information includes brief descriptions of the sites, and a general description of the NPL listing process.

If you have any questions, please contact me or your staff may contact Raquel Snyder, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-9586. We expect the rule to be published in the Federal Register in the next several days.

Sincerely,

Assistant Administrator

Enclosures

United States Senate

WASHINGTON, DC 20510

November 30, 2011

The Honorable Lisa Jackson Administrator Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460

Dear Administrator Jackson:

The United States and Canada are committed to ensuring positive health benefits for North Americans through a reduction in sulfur content in fuel. This commitment forms the basis for their Emissions Control Area (ECA) application to the International Maritime Organization under the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex VI Treaty.

We support the goal of protecting public health. We understand that the Environmental Protection Agency (EPA), in conjunction with the maritime industry, has been examining the weighted averaging of emissions as a comparable means of achieving the public health and environmental benefits of the ECA. We endorse this approach and continued dialogue, which would allow industry to utilize a recognized scientific means of measuring emissions. As the EPA continues to review the air quality modeling assumptions, it is important to provide consistent protections for similar shoreside locations and population densities.

The EPA has recognized the use of exhaust gas scrubbing as an equivalent means of achieving similar environmental and public health benefits to utilizing low sulfur fuels. However, the agency has not yet recognized emissions averaging as an equivalent means of achieving the same results. Averaging, trading, and banking programs are being widely used for land-based sources of particulate matter and sulfur oxide emissions.

As members of Congress who represent communities dependent upon maritime commerce for their livelihood, we urge the EPA to exercise flexibility in determining equivalencies for compliance with the ECA, and in particular, to favorably consider

The Honorable Lisa Jackson November 29, 2011 Page 2

weighted averaging, and to recognize those equivalency determinations that other parties to MARPOL Annex VI have allowed. Within applicable rules and regulations, we would appreciate your full and fair consideration.

DANIEL United States Senator	My
Susan M. Collins United States Senator	United States Senator
United States Senator	United States Senator
United States Senator	United States Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

FEB - 6 2012

OFFICE OF AIR AND RADIATION

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter to Administrator Lisa Jackson dated November 30, 2011. In your letter, you and your colleagues urge the U.S. Environmental Protection Agency to be flexible in considering equivalent compliance approaches for ships operating in the North American Emission Control Area (ECA), and in particular, to favorably consider weighted emission averaging.

As a matter of practice, we are generally supportive of ideas that will reduce compliance costs while providing equivalent emission reductions. For example, one of the prominent technologies investigated as an equivalency for low sulfur fuel is the use of exhaust gas cleaning systems, also known as oxides of sulfur (SOx) scrubbers. As noted in your letter, we support the use of SOx scrubbers as a compliance alternative to operating on lower sulfur fuel.

We have had several meetings with the Cruise Lines Industry Association (CLIA) who approached us with their thoughts on equivalency compliance approaches, including a concept for population-weighted emission averaging. It should be noted that population-weighting would be a significant departure from the averaging, banking, and trading programs currently used by the EPA. Under a traditional averaging approach, each ton of emissions increased from one source is offset with a full ton of emissions reduction from another source. Under a population-weighted emission averaging approach, one ton of emissions increased in one location could be offset with a decrease of much less than one ton of emissions in another location with a higher population density. In this way, weighted averaging provides a direct incentive to increase emissions when operating near communities with lower populations. For example, small emission reductions near Seattle and Vancouver could be used to offset much larger emission increases in Alaska.

We expressed to CLIA our concern that population-weighted averaging would result in a disproportionate burden of environmental harms and risks for citizens in different communities, depending on their population density. An approach trading off anticipated benefits in less populated areas raises Environmental Justice issues in that it could adversely affect under-represented communities in rural areas such as native Alaskan tribal nations. In addition, we expressed our concern to CLIA that population-weighted averaging would result in a net increase in tons of emissions of sulfur oxides, particulate matter, and air toxics (including heavy metals) in the ECA. This net increase in emissions would be detrimental to the affected ecosystems inland of the ECA because of impacts on visibility, ecosystem health, tree biomass production, acidification, and other issues.

We will continue our dialogue with CLIA to investigate how to address these issues and to potentially consider other approaches. More broadly, we will continue to exercise flexibility as we seek innovative methods for ships operating within the North America ECA to achieve equivalent emission reductions at lower cost.

Again, thank you for your letter. If you have further questions please contact me or your staff may call Patricia Haman in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2806.

Sincerely,

Gina McCarthy

Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

APR 1 6 2012

THE ADMINISTRATOR

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

It is my pleasure to inform you that the U.S. Environmental Protection Agency (EPA) has recognized two of your constituents, Manitowoc Foodservice and Central Florida Energy Efficiency Alliance, as 2012 ENERGY STAR award winners. This award recognizes the leadership of these organizations in reducing greenhouse gas emissions through improved energy efficiency. The awards were presented during a ceremony on March 15, 2012, in Washington, DC.

The 2012 ENERGY STAR award winners have distinguished themselves from nearly 20,000 program partners by making a long-term commitment to energy efficiency and leading the way for others through their example. These leaders prove that climate protection efforts can be good for the environment and good for the bottom line, and they are driving market transformation through their innovative practices and significant technological advances. As a diverse set of product manufacturers, utilities, building owners and managers, retailers, and homebuilders, they represent the partners nationwide that are achieving remarkable benefits through the ENERGY STAR program.

I am pleased to report that their efforts, along with the efforts of others, have made a significant impact. The ENERGY STAR label can now be found on more than 60 types of energy-efficient products, as well as top-performing new homes, schools, commercial buildings, and industrial plants. Last year alone, ENERGY STAR helped Americans save about \$23 billion on their utility bills and reduce greenhouse gas emissions equivalent to those from 41 million vehicles.

Please help us congratulate your constituents for their achievements in improving energy performance and protecting the environment. If you or your staff have any questions or would like more information, please contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely

Lisa P. Jackson

United States Senate

WASHINGTON, DC 20510

COMMERCE, SCIENCE, AND TRANSPORTATION

FOREIGN RELATIONS

SELECT COMMITTEE ON INTELLIGENCE

SMALL BUSINESS AND ENTREPRENEURSHIP

May 21, 2012

Mr. David McIntosh Associate Administrator for Congressional and Intergovernmental Relations **Environmental Protection Agency** 1200 Pennsylvania Avenue NW, Room 3426 ARN Washington, DC 20460-0003

Dear Mr. McIntosh,

Enclosed you will find correspondence from my constituent (b) (6) regarding the application filed by Med Safe Solutions US, Inc. requesting its reclassification as an on-site eliminator of narcotics-based pharmaceutical waste. Please review this matter and report back to me.

If you require additional information, contact Mercedes Ayala on my staff at (407) 318-2735. You may forward your response to my office at 201 South Orange Avenue, Suite 350, Orlando, FL 32801. The fax number is (407) 423-0941. Thank you for your assistance.

Sincerely,

Marco Rubio

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United States Senator

MR/ma

Enclosure



Office of U.S. Senator Marco Rubio Privacy Act Consent Form

In accordance with the provisions of The Privacy Act of 1974 (Public Law 93-579), your expressed written consent is required prior to contacting a federal agency on your behalf. Since e-mails do not contain a valid signature, they do not fulfill the requirements of the Privacy Act. If you are inquiring on behalf of another person age 18 or older, it is necessary that he or she sign this document. All information must be written in English. Items marked with an asterisk(*) are required.

*Title: select one) Mr. DMs. DMrs. DMr. &	k Mrs. Rev. Doctor Other:(b)	(6)	
*Name: (b) (6)	*Date of Rirth:		
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I have discussed my concerns with Senator Marco Rub vant information that is required to assist in respondin			
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/ Please mail or fax of	completed form to:		
U.S. Senator			
201 S. Orange A			
Orlando, Fl			
Fax: (407)	423-0941		

May 11, 2012

U.S Senator Marco Rubio, 201 S.Orange Avenue Suite 350 Orlando,Fl 32801

Dear Senator Rubio,

By way of introduction my name is (b) (6) and I am a native Floridian and have been a citizen of Florida for 60 years. Additionally, I am a shareholder in Medsafe Solutions, Inc., a Florida corporation. The purpose of this letter is to address regulatory hurdles and inconsistencies that Medsafe is currently facing.

The singular reason Medsafe Solutions was formed was to explore and find a viable solution to eliminate the continuing introduction of narcotics-based pharmaceutical waste into our water supply. There have been a large number of studies, research efforts and white papers documenting the fact that traces of numerous narcotics are present in nearly every source of water in the U.S., both potable and non-potable sources. These studies include a seven-year study performed by the Environmental Protection Agency (EPA) and their results are consistent with all of the other test results. These facts can be quickly supported and documented via the internet.

These narcotic compounds are not water soluble and, therefore, water treatment plants are unable to remove them. They never completely go away; the only way to keep them out of the water supply is to destroy them before they have a chance to get in the water supply. The EPA estimates that hospitals, nursing homes, veterinarians, hospice organizations, and clinics "sewage" (i.e.-flush) over 300 million pounds of these narcotic compounds every year into the water supply of the U.S. Obviously this is a very big and very serious ongoing problem, only to get bigger as the population ages and more prescriptions are written.

Medsafe Solutions was formed to address this specific problem. We have spent considerable time and money and have worked for years with the EPA, DEA, DOT and Florida DEP to get them to understand our unique and practical approach and through a great deal of persistence and a thorough review process, we were finally successful in Medsafe obtaining the first-ever permit issued by the FDEP, specifically targeted for the on-site destruction of narcotics-based pharmaceutical waste.

Because Federal law prohibits the transport of controlled substances (narcotics-based waste), simply stated, our approach is the use of a mobile burner that completely destroys these wastes through introduction to temperatures of up to 2,000 degrees Fahrenheit. It is this solution that was permitted by the EPA. In essence, the mobility allows us to perform the destruction without an adverse impact on the environment, while operating on-site without the waste ever having to be transported. In fact, the <u>main</u> reason the FDEP was enthusiastic about our solution was that the destruction process would occur at multiple sites for short periods of time, typically less than two hours.

Our problem now is that the conditions contained in the permit mirror the emissions testing requirements of a fixed-site municipal incinerator that burns 24/7. As you can imagine, a municipal incinerator burns virtually all types of materials generated by a community including plastics, rubber and metals. The <u>only</u> material that will be burned in our device is narcotics-based waste.

Fixed-site incinerators, understandably, must be tested for emissions for the material they burn such as dioxins & furans produced by plastic and emission tests for lead, cadmium, carbon dioxide, nitrogen oxides and mercury among others. As you can imagine, testing for all of these emissions is prohibitively expensive for a small private company. Our problem is that these specific emission tests do not apply to our unit as we do not burn the same materials as a fixed-site municipal incinerator and, therefore, do not produce these emissions. We are happy to test our device but not for emissions that narcotics-based waste does not produce. While we genuinely appreciate the support the EPA and other regulatory agencies have provided to this point, it is cost prohibitive to move forward being held to the same test criteria as a fixed-base municipal incinerator. Furthermore, the EPA's stance is that every single device purchased, despite the fact they are identical, must be tested when purchased and annually thereafter. This is a hurdle we cannot clear.

Despite the fact that the EPA is the guardian of our nations water supply and, by their own admission, is seriously concerned about the alarming presence of "pharmaceuticals" in our water supply they cannot see their way clear to exempt us from these tests or classify us as something other than an incinerator. The irony here is that EPA's air quality standards are in conflict with their water quality standards.

Everybody in Government talks about the need for jobs. We are attempting to start a business that has the potential to employ many people and will produce significant health benefits for all citizens by safeguarding our nation's potable water supply. If our political leaders, including the President, are serious about their remarks in desiring to produce "green" industry jobs then Medsafe Solutions is the "greenest company you never heard of".

We need your help! We need you to intercede with the EPA on our behalf and get them to reclassify us, or exempt us from the unnecessary testing requirements, or require just those tests that apply to what we are permitted to burn (i.e.-narcotic-based pharmaceutical waste).

In closing, we would like to bring to your attention that the Food & Drug Administration (FDA) still considers "sewaging" narcotics-based waste pharmaceuticals an acceptable practice and the EPA has only recently changed "sewaging" from a "best practice" to a "discouraged practice" although still allowed. That this practice continues is deeply distressing when there is existing authority in the Clean Water Act to stop this completely and immediately.

Your expeditious attention to these matters would be greatly appreciated. I look forward to hearing positive news from you in the very near future.



Dear Senator Rubio,

For your information we hit the wall with this situation in the person of Ms. Charlene Spells

EPA's Office of air quality Planning and standards Sector Policies and Programs Division Natural Resources and Commerce Group 109 T.W. Alexander Drive Research Triangle Park, NC 27709 Mail code E143-03 (919)541-5255 E-Mail spells.charlene@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUN 26 2012

OFFICE OF AIR AND RADIATION

The Honorable Marco Rubio United States Senate 201 South Orange Avenue Suite 350 Orlando, Florida 32801

Dear Senator Rubio:

Thank you for your letter of May 21, 2012, on behalf of your constituent (b) (6) who is a shareholder in Medsafe Solutions, Inc. I understand from (b) (6) letter that he has requested relief from testing requirements for a portable incinerator which will be used to burn narcotics-based pharmaceutical waste.

As you may know, we are required under the Clean Air Act (CAA) to establish emissions standards for units that burn solid waste. The term "solid waste" has the meaning established by the Administrator under the Resource Conservation and Recovery Act and includes discarded medications.

The CAA requires the U.S. Environmental Protection Agency to establish emissions standards for different types of solid waste incineration units, including "other solid waste incineration" (OSWI) units. The EPA's current OSWI regulations include emissions standards for very small municipal waste combustion units and institutional waste incineration units. The unit described by (6) seems been permitted by the state of Florida as an OSWI unit. The regulations which apply to OSWI units are found in 40 C.F.R. part 60 subpart EEEE and the specific requirements for initial and annual performance testing are found in section 60.4922.

The OSWI rule provides for relief from performance testing under the performance test waiver in the General Provisions, which apply to regulations codified under 40 C.F.R. part 60. Specifically, section 60.8(b) allows for a waiver of a performance test where "the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the affected facility is in compliance with the standard." Additional guidance on the application of the performance test waiver may be found in the April 27, 2009, "Clean Air Act National Stack Testing Guidance."

Waivers for stack testing are granted only if the owner or operator of a source has demonstrated by other means that the source is in compliance with the applicable standard. In the "Clean Air Act National Stack Testing Guidance" document, we describe certain criteria which will be used to evaluate and approve waivers from performance testing. Medsafe is welcome to submit a request for a waiver if they believe that they can meet the criteria and demonstrate by other means the source is in compliance with the standard. That request must be made in writing to U.S. EPA Region IV. The agency can then evaluate Medsafe's demonstration and determine if a waiver is warranted.

Finally, the rule also allows for relief from annual performance testing to testing every two or three years, if certain prior performance test criteria are met. Please see section 60.4934.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,

Gina McCarthy

Assistant Administrator

United States Senate

WASHINGTON, DC 20510

August 6, 2012

The Honorable Lisa P. Jackson, Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, DC 20460-0001

Dear Administrator Jackson:

As you are aware, the U.S. Environmental Protection Agency (EPA) recently published two Notices of Data Availability (NODAs) related to the EPA's proposed rule governing cooling water intake structures under Section 316(b) of the Clean Water Act. We agree these NODAs raise critically important issues regarding cost-effective approaches to regulating affected facilities while protecting fishery resources; however, we believe the proposed rule has the potential to impose enormous costs on consumers without providing human health benefits or significant improvements to fish populations.

As a result, we believe the EPA needs to make a number of substantial improvements to the proposed rule before issuing it in final form. In addition, we are concerned by the "willingness-to-pay" public opinion survey, which we believe is misleading and will artificially inflate the rule's purported benefits. This rule will affect more than one thousand coal, nuclear and natural gas power plants and manufacturing facilities. Therefore, we urge you to ensure that the final rule provides ample compliance flexibility to accommodate the diversity of these facilities. Specifically, we request the EPA to address the following critical issues:

<u>Flexibility</u>. The proposed rule correctly provides state governments with the lead authority to make site-specific evaluations to address entrainment. It is vitally important the EPA's final rule retain this compliance flexibility, allowing technology choices to be made on a site-specific basis reflecting costs and benefits. We encourage the EPA to adopt these features in the impingement parts of the rule as well.

<u>Aligned Compliance Deadlines</u>. The final rule should extend the compliance deadline for impingement to the longer proposed deadline for entrainment, thereby providing adequate time to allow companies to make integrated, cost-effective compliance decisions.

Impingement Requirements. The proposed rule includes a stringent national numeric impingement standard that would be impossible for facilities to meet, even those with state-of-the-art controls. In fact, the technology preferred by the EPA – advanced traveling screens and fish return systems – is unable to meet the proposed standard on a reliable basis. We believe the final rule should instead provide multiple pre-approved technologies that would be recognized, once installed and properly operated, as sufficient to address impingement concerns. In cases where such technologies are not feasible or cost-beneficial, the rule should provide an alternative compliance option and relief where it can be shown there are *de minimis* impingement or entrainment impacts on fishery resources.

<u>Definition of Closed-Cycle Cooling</u>. Many facilities today have closed-cycle cooling systems. The rule should ensure that the definition of what qualifies as closed-cycle systems at existing facilities is not more stringent than the one the EPA has already adopted for new facilities. Further, the definition should include any closed-cycle system recirculating water during normal operating conditions; and the definition must not exclude impoundments simply because they are considered waters of the United States.

<u>Public Opinion Survey</u>. We feel strongly that the EPA should not rely upon the "willingness-to-pay" public opinion survey discussed in the second NODA. The public opinion survey method is highly controversial and does not provide a scientific basis for reliable results; and we believe the survey results published thus far by the EPA lack peer review and, consequently, are insufficiently analyzed. This approach to economic analysis is far too speculative to serve as a basis for national regulatory decision-making, presenting very worrisome national, legal, policy, and governance implications which go well beyond this rulemaking.

For these reasons, we believe the EPA should issue the final rule this year without further consideration or inclusion of the public opinion survey results in order to provide regulatory and business certainty to those companies facing significant capital decisions related to compliance with this and other EPA rules. Rather than using a misleading survey to inflate the rule's benefits, the EPA should adopt the above improvements, which would help to reduce the current substantial disparity between the proposed rule's costs and benefits. Such actions by the EPA would also conform to the President's Executive Order 13563, issued in January 2011, directing agencies to adopt rules minimizing regulatory burden and producing maximum net benefits.

Thank you for your consideration of our concerns. We look forward to your response.

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Mark Royar Lawar Aryander

Mike Cryoo

Carlie Northerd

Par Blats Mary & Jundin

John Rooman Mad Cooking

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Mark R Wines Mile Glamme

cc: Jacob J. Lew, Chief of Staff, Office of the President Jeffrey Zients, Acting Director, Office of Management and Budget Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 3 1 2012

OFFICE OF WATER

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of August 6, 2012, to the U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson regarding the proposed rule for cooling water intake structures that the EPA published in April 2011. During the public comment period for the proposed rule, we received many comments on how to make national standards work better for the diverse community of interests, including more than 1200 industrial facilities, state permitting authorities, and commercial and recreational fishermen. Your letter reflects some of the concerns we heard during the public comment period. The EPA is carefully considering the comments and new data we have received from the regulated community and other stakeholders as it works toward a final rule. As the senior policy manager of the EPA's national water program, I am pleased to respond to your letter on behalf of Administrator Jackson.

The proposed rule would establish national standards under section 316(b) of the Clean Water Act for certain existing power plants and manufacturing facilities. Under the Clean Water Act, section 316(b) standards must reflect the best technology available for "minimizing adverse environmental impact." The proposed rule seeks to minimize adverse environmental impact through standards that protect aquatic organisms from death and injury resulting from the withdrawal of water by cooling water intake structures. The largest power plants and manufacturing facilities in the United States (that each withdraw at least two million gallons per day) cumulatively withdraw more than 219 billion gallons of water each day, resulting in the death of billions of aquatic organisms such as fish, larvae and eggs, crustaceans, shellfish, sea turtles, marine mammals, and other aquatic life. Most impacts are to early life stages of fish and shellfish through impingement and entrainment². The proposed rule would establish a baseline level of protection from impingement and then allow additional safeguards for aquatic life to be developed through site-specific analysis by the states. This flexible approach would ensure that the most up-to-date technologies are considered and appropriate cost-effective protections of fish and other aquatic populations are used.

Your letter expresses concerns regarding the potential costs that our rule may have on power plants and on consumers. Let me assure you that the EPA takes these concerns very seriously. The agency is working hard to develop a final rule that achieves environmental benefits consistent with the Clean Water Act and in a way that ensures that our nation's energy supplies remain reliable and affordable.

¹ Impingement is the pinning of fish and other larger aquatic organisms against the screens or other parts of the intake structure.

² Entrainment is the injury or death of smaller organisms that pass through the power plant cooling system.

Your letter expressed concern about the impingement mortality standards, related alternatives and flexibility, and the timeline for compliance in the proposed rule. Since proposal, the EPA has received new data related to the performance of impingement mortality control technologies. In particular, the EPA obtained more than 80 studies that provided additional data on the costs and performance of these technologies. These data include important information related to how the EPA might approach the definition of impingement mortality and compliance alternatives.

On June 11, 2012, the EPA published a Notice of Data Availability (NODA) setting forth a number of possible approaches to increase flexibility for impingement requirements. Perhaps most significantly, the NODA described a streamlined regulatory process for facilities that simply opt to employ specific pre-approved technologies that have been consistently demonstrated to protect the greatest numbers of fish and other aquatic life. The NODA solicited comment on how to establish impingement controls on a site-specific basis in those circumstances in which the facility demonstrates that the typical controls are not feasible. The NODA also identified a possible site-specific impingement category that would reduce or even eliminate new technology requirements for facilities with very low rates of fish and aquatic life death or injury. The EPA also requested comment on how best to define closed-cycle recirculating systems to ensure effective operation of these systems at existing facilities. We were pleased that stakeholders submitted the information requested in the NODA, and the EPA is considering all of this new information as we move toward completing the final rule.

Your letter also indicated concern with an EPA survey that is described in a second NODA published June 12, 2012. As stated in the NODA, the EPA's work in this area is preliminary and, "the agency has not yet determined what role, if any, the survey will play in the benefits analysis of the final 316(b) rulemaking." This survey was conducted to provide the public with more complete information about the benefits of reducing fish mortality. The benefits to society of preventing ecological damage to the aquatic environment are difficult to assess because it is hard to place a monetary value on the ecological services and public benefits of a healthy ecosystem. At the time of proposal, the EPA made it clear that the Regulatory Impact Analysis (RIA) underestimated the actual benefits and that the agency had already commenced a stated preference survey in order to do a better job of capturing the benefits of the rule.

The stated preference method poses hypothetical policy options, allowing researchers to directly inquire about citizens' willingness to pay for environmental improvements. This method can assess ecological benefits in a more complete manner than the methodologies the EPA used for the proposed rule. Stated preference methodologies have been refined for over 30 years in the academic literature, have been extensively tested and validated through years of research, and are widely accepted by both government agencies and the U.S. courts as a reliable technique for estimating non-market values of healthy ecosystems. The EPA has been using data derived from stated preference surveys, where appropriate, in RIAs, for several decades. The EPA survey described in the second NODA follows the White House Office of Management and Budget (OMB) published guidance on conducting such surveys (Circular A-4: Regulatory Analysis 2003), and was approved by OMB in June 2011.

³See: Enhancing the Content Validity of Stated Preference Valuation: The Structure and Function of Ecological Indicators, Johnston et al., 2012 and What Have We Learned from Over 20 Years of Farmland Amenity Valuation Research in North America?, Bergstrom and Ready 2009.

The NODA was intended to inform the public of the preliminary results of the survey, make this information available for review, and provide an opportunity for all interested stakeholders to comment. The EPA also explained that the survey would be revised based on additional analysis, a range of analytical tests for rigor and consistency, public comments, and the results of an external peer review which would be completed prior to taking final action on the rule.

Since publication of the NODA, the EPA has completed the majority of this additional analytical work and reviewed the public comments from the June 12 NODA. We are also proceeding with an independent, external peer review, as described above, with a panel of economists and survey experts. Once the EPA has revised its analysis to reflect peer reviewer comments, the results of the stated preference survey will be posted online at: http://epa.gov/waterscience/316b. After a full review of the completed analysis, public comments, and the independent peer review, the agency will be in a position to determine the appropriate use of the stated preference survey in the final 316(b) rulemaking.

Again, thank you for your letter on this important rule. The agency proposed these regulations to meet its Clean Water Act obligations, and we expect to take final action in 2013. In doing so, we intend to fully consider all comments we received during the public comment periods for the proposed rule and the subsequent comments received in response to the two NODAs published in the Federal Register on June 11 and 12, 2012. For additional information on the proposed rule or the NODAs, please go to the EPA's 316(b) webpage at the above link.

If you have further questions, please contact me or your staff may call Greg Spraul in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0255.

Sincerely,

Nancy K. Stoner

Acting Assistant Administrator

KPS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

SEP 2 1 2012

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

The U.S. Environmental Protection Agency's (EPA) Superfund program will be adding the Fairfax St. Wood Treaters site, located in Jacksonville, Florida, to the National Priorities List (NPL) by rulemaking. The EPA received a governor/state concurrence letter supporting the listing of this site on the NPL. Listing on the NPL provides access to federal cleanup funding for the nation's highest priority contaminated sites.

Because the site is located within your state, I am providing information to help in answering questions you may receive from your constituency. The information includes a brief description of the site, and a general description of the NPL listing process.

If you have any questions, please contact me or your staff may contact Raquel Snyder, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-9586. We expect the rule to be published in the <u>Federal Register</u> in the next several days.

Sincerely,

Mathy Stanislaus

Assistant Administrator

Enclosures



NATIONAL PRIORITIES LIST (NPL)

Final Site

September 2012

FAIRFAX ST. WOOD TREATERS | Jacksonville, Florida

Jacksonville, Florida Duval County

Site Location:

Fairfax St. Wood Treaters is located at 2610 Fairfax Street, Jacksonville, Florida. The 12-acre property is located in a dense residential area, adjacent to two elementary schools, a day care center and several homes.

△ Site History:

From 1980 to 2010, Wood Treaters, LLC pressure treated utility poles, pilings and other lumber products using the preservative chromated copper arsenate (CCA). Wood Treaters, LLC filed for bankruptcy, and by July 2010 ceased operations and abandoned the facility. Seven above ground storage tanks, in poor condition, contained high levels of arsenic, chromium and copper. In August 2010, the State of Florida Department of Environmental Protection requested the EPA's assistance in mitigating the release of hazardous substances to the environment.

■ Site Contamination/Contaminants:

CCA is characterized by a bright green color and is composed of waterborne oxides of chromium, copper and arsenic. Wood treated with CCA drip-dried on the property, resulting in arsenic, chromium and copper contamination. During operations, some contaminated storm water flowed off the site and onto surrounding properties including a parking lot retention pond and Moncrief Creek. Wood treating operations resulted in soil, water and sediment contamination with chromium, copper and arsenic. Arsenic and chromium are known human carcinogens.

m Potential Impacts on Surrounding Community/Environment:

Several nearby residential properties, two schools and a day care center have been contaminated by the site. The contamination migrated to surrounding properties by overland storm water runoff or by wind deposition. Moncrief Creek is potentially contaminated and will be investigated during the Remedial Investigation.

Response Activities (to date):

On August 11, 2010, the EPA initiated a Superfund emergency response and removal action to secure the site and prevent further releases of hazardous substances. To date, the EPA response actions have prevented contaminated water from discharging offsite, removed water and sediment from the onsite retention pond, removed the surface soil across the entire site and removed all tanks and piping. In addition, the EPA removed contaminated soil, and the water and sediments of a retention pond, on the adjacent elementary school playground.

■ Need for NPL Listing:

The state referred the site to the EPA because the operator abandoned the facility. No other federal and state cleanup programs are available to remediate the site. Inclusion on the Superfund National Priorities List will allow the EPA to address subsurface soil contamination on the site, soil contamination on residential properties surrounding the site, and to determine the impacts of the site on local ground water and surface water. The EPA received a letter of support for placing this site on the NPL from the state of Florida.

[The description of the site (release) is based on information available at the time the site was evaluated with the HRS. The description may change as additional information is gathered on the sources and extent of contamination.]

For more information about the hazardous substances identified in this narrative summary, including general information regarding the effects of exposure to these substances on human health, please see the Agency for Toxic Substances and Disease Registry (ATSDR) ToxFAQs. ATSDR ToxFAQs can be found on the Internet at http://www.atsdr.cdc.gov/toxfaqs/index.asp or by telephone at 1-888-42-ATSDR or 1-888-422-8737.



NATIONAL PRIORITIES LIST (NPL)

WHAT IS THE NPL?

The National Priorities List (NPL) is a list of national priorities among the known or threatened releases of hazardous substances throughout the United States. The list serves as an information and management tool for the Superfund cleanup process as required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances.

There are three ways a site is eligible for the NPL:

1. Scores at least 28.50:

A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (HRS), which EPA published as Appendix A of the National Contingency Plan. The HRS is a mathematical formula that serves as a screening device to evaluate a site's relative threat to human health or the environment. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for inclusion on the NPL. This is the most common way a site becomes eligible for the NPL.

2. State Pick:

Each state and territory may designate one top-priority site regardless of score.

3. ATSDR Health Advisory:

Certain other sites may be listed regardless of their HRS score, if all of the following conditions are met:

- a. The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Department of Health and Human Services has issued a health advisory that recommends removing people from the site;
- b. EPA determines that the release poses a significant threat to public health; and
- c. EPA anticipates it will be more cost-effective to use its remedial authority than to use its emergency removal authority to respond to the site.

Sites are first proposed to the NPL in the *Federal Register*. EPA then accepts public comments for 60 days about listing the sites, responds to the comments, and places those sites on the NPL that continue to meet the requirements for listing. To submit comments, visit <u>www.regulations.gov</u>.

Placing a site on the NPL does not assign liability to any party or to the owner of any specific property; nor does it mean that any remedial or removal action will necessarily be taken.

For more information, please visit www.epa.gov/superfund/sites/npl/.

United States Senate

WASHINGTON, DC 20510

September 11, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
U.S. EPA Headquarters – William J. Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

We are writing to request that the Environmental Protection Agency (EPA) provide a 60 day extension of the comment period for the "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units." While we appreciate EPA granting an initial 120 day comment period, the complexity and magnitude of the proposed rule necessitates an extension. This extension is critical to ensure that state regulatory agencies and other stakeholders have adequate time to fully analyze and comment on the proposal. It is also important to note that the challenge is not only one of commenting on the complexity and sweeping scope of the rule, but also providing an opportunity to digest more than 600 supporting documents released by EPA in support of this proposal.

The proposed rule regulates or affects the generation, transmission, and use of electricity in every corner of this country. States and stakeholders must have time to fully analyze and assess the sweeping impacts that the proposal will have on our nation's energy system, including dispatch of generation and end-use energy efficiency. In light of the broad energy impacts of the proposed rule, state environmental agencies must coordinate their comments across multiple state agencies and stakeholders, including public utility commissions, regional transmission organizations, and transmission and reliability experts, just to name a few. The proposed rule requires a thorough evaluation of intra- and inter-state, regional, and in some cases international energy generation and transmission so that states and utilities can provide the most detailed assessments on how to meet the targets while maintaining reliability in the grid. This level of coordination to comment on an EPA rule is unprecedented, extraordinary, and extremely time consuming.

It is also important to note that the proposed rule imposes a heavy burden on the states during the rulemaking process. If the states want to adjust their statewide emission rate target assigned to them by EPA, they must provide their supporting documentation for the adjustment during the comment period. The EPA proposal provides no mechanism for adjusting the state emission rate targets once they are adopted based on the four building blocks. So the states need enough time to digest the rule, fully understand it, and then collect the data and justification on why their specific target may need to be adjusted, and why the assumptions of the building blocks may not apply to their states. This cannot be adequately accomplished in only 120 days.

Thank you for your consideration of this request.

Sincerely,

Weidi Heidhour

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

September 16, 2014

OFFICE OF AIR AND RADIATION

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of September 11, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy requesting an extension of the comment period for the proposed Clean Power Plan, which was signed on June 2, 2014, and published in the Federal Register on June 18, 2014. The Administrator asked that I respond on her behalf.

Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country, to learn more about what programs are already working to reduce carbon pollution. In addition, during the week of July 29, the EPA conducted eight full days of public hearings in four cities. Over 1,300 people shared their thoughts and ideas about the proposal and over 1,400 additional people attended those hearings.

These hearings and these meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, industry, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way we generate power in this country is diverse and interconnected.

Recognizing that the proposal asks for comment on a range of issues, some of which are complex, the EPA initially proposed this rule with a 120-day comment period. The EPA has decided to extend the comment period by an additional 45 days, in order to get the best possible advice and data to inform a final rule.

The public comment period will now remain open until December 1, 2014. We encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule. We have submitted your letter to the rulemaking docket, but additional comments can be submitted via any one of these methods:

Federal eRulemaking portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

- E-mail: <u>A-and-R-Docket@epa.gov</u>. Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.

- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR–2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301
 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the
 Docket's normal hours of operation, and special arrangements should be made for deliveries of
 boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,

Janet G. McCabe

Acting Assistant Administrator

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

MAR 2 1 2014

OFFICE OF AIR AND RADIATION

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

On behalf of the U.S. Environmental Protection Agency, it is my pleasure to inform you that Florida Power & Light Company, located in Juno Beach, Florida, has been selected for a Clean Air Excellence Award for their project FPL's Clean Fleet and Consumer Education Program. We received almost 70 applications, and this project was chosen by the EPA's Office of Air and Radiation for its impact, innovation and replicability.

We would like to invite you to attend the 2014 Clean Air Excellence Awards Ceremony, which will be held on the evening of Wednesday, April 2, 2014, from 5:30 pm to 7:30 pm at the Crowne Plaza Hotel in Crystal City, Virginia. Along with others, I will be presenting the awards.

The Clean Air Excellence Awards Program recognizes and honors outstanding and innovative efforts to achieve cleaner air. The program was recommended to the EPA by the Clean Air Act Advisory Committee, which advises the EPA on policy issues related to the Clean Air Act.

We hope you will be able to join us in congratulating the winners from your state for their innovative projects that are helping us to achieve cleaner air. If you have any questions, please contact me or your staff may contact Jenny Craig of my staff at (202) 564-1674 or craig.jeneva@epa.gov.

Sincerely,

Janet G. McCabe

Acting Assistant Administrator

J. A. B. Malah

Eades, Cassaundra

From:

Lewis, Josh

Sent: To:

Tuesday, May 27, 2014 1:09 PM

Cc:

Eades, Cassaundra; Mims, Kathy Bailey, KevinJ

Subject: Attachments:

FW: letter to Admin. 14.05.22 - GHG rule.pdf

For CMS

From: Vaught, Laura

Sent: Friday, May 23, 2014 6:16 PM To: Lewis, Josh; Distefano, Nichole Subject: FW: letter to Admin.

New letter.

From: Decker, Sara (Commerce) [mailto:Sara Decker@commerce.senate.gov]

Sent: Thursday, May 22, 2014 4:48 PM

To: Vaught, Laura

Subject: letter to Admin.

Hi Laura -

Attached, please find a letter spearheaded by Senator Rubio to Administrator McCarthy regarding the anticipated proposed rule on greenhouse gas emissions for existing power plants. A hard copy is in the mail. Please let me know if you have any questions.

Sara E. Decker Professional Staff Member Office of Senator Marco Rubio Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard (202) 224-3041

United States Senate

WASHINGTON, DC 20510

May 22, 2014

The Honorable Gina McCarthy Administrator Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, DC 20460

Dear Administrator McCarthy:

It is our understanding that the Environmental Protection Agency (EPA) will be moving forward with a draft proposal to regulate greenhouse gases from existing power plants as soon as June 1st. Given the controversy and ongoing debate regarding the costs and benefits of this proposed regulation, we are respectfully writing that you do not move forward with the draft proposal at this time.

Energy that is cost-effective and drawn from diverse resources is indisputably a positive input to any economically prosperous society. In the United States, we have benefited from a diverse and abundant energy supply, one that includes coal and natural gas as well as nuclear and renewable energy. We have also prospered as a country because the costs of this energy have remained low, allowing businesses and families to use their income not to pay high electricity bills but to invest in their company or pay for college tuition. Unfortunately, while the overall benefits of any draft proposal are questionable, the economic and social costs of further regulating our electricity industry will undoubtedly increase costs for consumers and businesses. According to some estimates, such a proposal on existing power plants, when combined with other regulations already being put forth by the Administration, could cost 600,000 jobs and an aggregate decrease in gross domestic product by \$2.23 trillion. Even more notably, it could cost a family of four more than \$1,200 per year.

As public officials, we have a duty to weigh the costs of any policy, whether legislative or administrative, against the expected benefits. Unfortunately, we do not see a proper balance on the EPA's decision to move forward on regulating greenhouse gases from existing power plants and, for this reason, ask that you do not move forward with the draft proposal at this time.

Thank you for your consideration of our request.

Respectfully,

Juff Files

Mike Enzi pm When



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

AUG 2 8 2014

OFFICE OF AIR AND RADIATION

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of May 22, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy on the Clean Power Plan for Existing Power Plants, which was signed on June 2, 2014. The Administrator asked that I respond on her behalf.

Climate change induced by human activities is one of the greatest challenges of our time. It already threatens human health and welfare and our economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet. Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions.

The Clean Power Plan aims to cut energy waste and leverage cleaner energy sources by doing two things. First, it uses a national framework to set achievable state-specific goals to cut carbon pollution per megawatt hour of electricity generated. Second, it empowers the states to chart their own paths to meet their goals. The proposal builds on what states, cities and businesses around the country are already doing to reduce carbon pollution, and when fully implemented in 2030, carbon emissions will be reduced by approximately 30 percent from the power sector across the United States when compared with 2005 levels. In addition, we estimate the proposal will cut the pollution that causes smog and soot by 25 percent, avoiding up to 100,000 asthma attacks and 2,100 heart attacks by 2020.

Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country to learn more about what programs are already working to reduce carbon pollution. These meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, industry, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way we generate power in this country is diverse, complex and interconnected.

We appreciate you providing your views about the effects of the proposal. As you know, we are currently seeking public comment on the proposal, and we encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule including costs and benefits. The public comment period will remain open for 120 days, until October 16, 2014. We have submitted your letter to the rulemaking docket, but you can submit additional comments via any one of these methods:

- Federal eRulemaking portal: http://www.regulations.gov. Follow the online instructions for submitting comments.
- E-mail: <u>A-and-R-Docket@epa.gov</u>. Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR–2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301
 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the
 Docket's normal hours of operation, and special arrangements should be made for deliveries of
 boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at Lewis.josh@epa.gov or at (202) 564-2095.

Sincerely,

Janet G. McCabe

Acting Assistant Administrator

12 B. Mall





Office of U.S. Senator Marco Rubio

201 S. Orange Ave., Suite 350 Orlando, FL 32801 Phone 407-254-2573 Fax 407-423-0941

To:	Arvin Ganesan	From:	Jason Teaman	
440-1-100-100-100-100-100-100-100-100-10	Environmental Protection Agency			
Pages:	9 (Including cover)	Date:	11/30/2012	
Fax:	202-501-1519			
Re:	(b) (6)			

Comments:

I would greatly appreciate it if you could review this matter and provide a response. Please address your response to Senator Marco Rubio c/o Jason Teaman at 201 S. Orange Ave., Suite 350, Orlando, FL 32801.

Best Regards,

Jason Teaman

Constituent Services Representative

Jason_Teaman@rubio.senate.gov



Office of U.S. Senator Marco Rubio Privacy Act Consent Form

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Please return the completed form	By,mail:	U.S. Senator Mai 201 S. Orange At Orlando, Florida	rco Rubio venue, Suite 35		MING IN
	By fax: By email;	(407) 423-0941 casework@rubio			
H you have any questions, please	call the Orlando Regie	onal Office at (407)) 254-2573 or (8	66) 630-7106, tall-free	in Florida.

(b) (6)			
Name:			
(First)	Same)	(Middle Name)	(Last Name)

FOR INTERNAL USE ONLY:	-
WORKELOW #	

COMPLETE THE SECTION THAT APPLIES TO YOUR CASE

SEN MARCO RUBIO

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Name of Non-custodial Parent:		59N:	graph and shares were
Name of Child(ren):	Date of Birth:	59N:	
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CONSTITUENT SERVICES WORKSHEET



Date	Description of Action Taken
10/23/2012	We received an email from Sharon Ahearn with the Polk County Commissioners
	requesting our assistance with a situation involving damage done to a road during
	the recovery/eleanup of a plane crash in Lake Wafes.
	Summary: Plane crashed on June 7, 2012 at Tiger Creek Reserve in the Nature Conservatory in Lake Wales, Florida at the end of Jewell Lane (http://www.wtsp.com/news/anide/258338/8/The-brambage family of-to-was killed Thunslay in a tragic plane crash in Lake-Wales). Jewell Lane is a private road that has been maintained by the residents living thereon. The two mile dirt road consisted of clay, tile and lime rock as the base of the road prior to the plane crash. The residents who could afford to contribute, paid out of pocket to surface the road. With the emergency vehicles and heavy trucks and equipment accessing the road after the crash, the 'crust' of the road has been destroyed.
	The road surface, which was flat and hard and easily accessible for the residents' vehicles, now is full of potholes, sugar sand and ditches making it very difficult for residents to get to their homes.
	The residents are requesting that the road be returned to its original condition prior to the airplane crash.
10/23/2012	I called Sharon to let her know we had received the email and would look into it. I told her that (b) (6) was welcome to contact us directly if he would like to.
10/23/2012	I forwarded the initial letter to Representative Albritton so that he was aware of the situation.
10/29/2012	(b) (6) called the office to see if we thought we may be able to help them. I asked him to get a list of all of the agencies that he was aware of who had accessed the road during the recovery process. I also asked him if he could give me a ballpark estimate as to what it would cost to return the road to its condition before the crash. I told him I would make some initial phone calls to try to get some
10/29/2012	direction and that I would come out and look at the damage to the road. I emailed Zach Burch with FDOT to see if he could give me any suggestions with
10/30/2012	this. He said that he was going to do some checking around and get back to me. Zach called back and said that he had checked with some of their staff and attorneys and they feel like the residents have a very legitimate complaint and have suffered damages that could easily be proven. They have not run across a situation like this before and they need to do some research for possible options. Zach is going on his honeymoon next week so he is turning this over to Toby Philpot while he is gone.

	(b) (6)
10/31/2012	I went to Lake Wales and looked at the road with a pictures and picked up a map and a list of agencies responsible for the damage.
	The agencies he knew of were:
	 County: Polk County Fire/Rescue and Polk County Sheriff's Office
	State: Division of Forestry and Game Commission
	■ Federal: NTSB: FAA; EPA
1	Lasked him if he had received the estimate we talked about previously but he has
	not.
11/1/2012	Toby called me to follow up and let me know that Zach had filled him in on the
	situation and that he was trying to come up with some possible options as well.
14/4/2012	I met with Representative Albritton to discuss this situation. He asked me to
	contact Tucker Construction and Engineering in Winter Haven to see if they could
1	give us a cost estimate and we would determine how to proceed from there.
11/13/2012	Leafled Tucker Construction and left a voice mail (863-299-4444).
11/15/2012	(b) (6) and he said that the estimate he received was in excess of
ļ	\$80,000,00, He felt this was high.
11/16/2012	An employee with Tucker Construction called me back and gave me the number to
1 .	call for their paying department. I called and left a voice mail.
11/20/2012	Jeff, with Tucker Paving, called me back and Lexplained the situation to him. He
· 1	suggested that I determine who the carried the insurance on the airplane and
	contact them. He said in vehicle accidents the insurance company is responsible
	for the costs of clean-up and he believed this would fall under that description. He
	said that, most likely, the insurance company would require three estimates and
: !	they would be happy to put in a bid. He gave me the email for the individual who
11/20/2012	does their estimates (mattactue)kerpaving.com)
14/20/2012	I called the Polk County Sheriff's Office to see if I could get a copy of the crash
	report. She said they only investigated the deaths of the individuals and I would
11/21/2012	need to contact the FAA for the crash report.
; 11,21,2012 	I spoke (4 <mark>b) (6) to let him know that I had talked to Jeff and that I would be contacting someone on the federal level to give me some direction as to how to</mark>
	determine who the insurance carrier was or and get their suggestions on the best
	way to proceed.
11/26/2012	I contacted Senator Marco Rubio's office to see if they could help me to determine
TO COMMON TO THE STATE OF THE S	who should be responsible and the best course of action to take in getting the road
	repaired. Heft a voicemail for Jason Teaman to return my call.
11/26/2012	Jason called me back and said that they would be glad to assist but he would first
	• need a written release from the constituent. He emailed me a copy of their form.
11/27/2012	(b) (6) to see how I could get the form to him to complete. He said
	he had a neighbor who had an email address I could forward it to and he would
	complete it and they would email it back,
11/27/2012	Mr. Stone, (b) (6) s neighbor, called me and gave me his email address
	(stone-qualifying grapo) com). He said he had the capability of scanning it and
	emailing it back to me after (b) (6) signed it.
The same and the s	
	The state of the s
į	

Whaley, Karen

From: Sent: Whaley, Karen on behalf of Albritton, Ben-Tuesday, October 23, 2012 11:27 AM

To: Subject: Ben Albritton (bon@albrittoncompanies.com)

(b) (6)Chumney...Airplane Crash/Lake Wales

Attachments:

SKMBT_C452)2301G12130.pdf

Have really interesting respect. My just thought would be to determine who careful the insurance on the angeland and see it the road damage would be covered by their palicy. Please let me know your thoughts.

Karen L. Whaley

Distant Aide to Representative Ben Attainon District on 150 North Central Avenue Barrow, Elevida 33830 (863) 53 10073 - District Office (863) 532 1601 - Cell Physic



From: Aheard, Sharon [3]@[ligitSharonAhearmgrpolls-county.not]

Sent: Tuesday, October 23, 2012 10:01 AM

To: Albritton, Ben

Subject: FW: (b) (6) ... Chumney... Airplane Crosh/Lake Wales

Attached is a statement from residents of Jewell Land in Lake Wales. This was the site of the airplane crash in June of 2012. As state vehicles were involved in clearing the weekage from the crash scene, can you see if the State will offer any assistance in repairing the damages to this road. As Jewell Lane is a private road, the county will not offer any assistance with the repairs.

Thank you!

From: Ahearn, Sharon

Sent: Tuesday, October 16, 2012 12:19 PM

To: Kushner, Mike

Subject: (b) (6) Chumney...Airplane Crash/Lake Wales

Attached is a statement, from two Jewell Lane residents (b) (6) & Hughie Chumney) relative to the airplane crash in Lake Wales on June 7. When you have time to review this information, please let me know if this is sufficient to file a claim on their behalf for the damage to Jewell Lane, which is a private road maintained by the residents

October 16th, 2012

11/30/2012 16:57 FAX



Hughie Chumney.....Tel: (863) 696-1010 & (863) 412-9450 6590 Jowell Lane 5113 Tiger Creek Road (Mailing Address) Lake Wales #1 33898

Plane Crash on June 7th, 2012 @ Tiger Craek Reserve in the Nature Conservancy.....take Wales. Fl @ the end of Jewell tane in take Wales. Jewell tane is a private road that has been maintained by the residents living thereon. The two mile dist road consisted of day, tile and limerock as the base of the road prior to the simplane crash. With the emergency vehicles and heavy trucks and equipment accessing the road, due to the entergency situation of the simplane crash, the 'crust' of the road has been jeapardized.

When the airplane crashed in the vicinity of Jewell Lane, life trucks, Sheriff's vehicles; Ambulances, ATV's and news trucks were in the area to assist in the rescue of potential survivors of the crash. The National Transportation Safety Board also was involved in the receivery of the auplane and clean/up of fuel from the crash....

The road surface, which was flat and hard and easily accessible for the residents' vehicles, now is full of potholes and ditches – making it almost impassable in inclement weather.

The residents are requesting that the road be returned to its' original condition prior to the airplane crash on June 7^{10} , 2012.

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Whaley, Karen

From:

Whaley, Karen

Sent:

Monday, October 29, 2012-2:09 PM

To:

Burch, Zachary (Zachary Burch例clot.state.fl.us)

Subject:

FW: Botzong...Chumney...Airplane Crash/Lake Wales

Zach

Here is the original email that was written by the control and Adr. Chimpey and forwarded to me by Sharon Abegan with County Commissioner Melony Bell's office:

Plane crash on June 7, 2012 at Tiger Creek Reserve in the Nature Conservatory in Lake Wales. Florida at the end of Jewell lane in Lake Wales. Jewell lane is a private road that has been maintained by the residents living thereon, the two mile dirt road consisted of clay, tile and lime rock as the base of the road prior to the plane crash. With the emergency vehicles and heavy trucks and equipment accessing the road, due to the energency situation of the airplane crash, the 'crust' of the road has been jeopardized.

When the airplane crashed in the vicinity of Jewell Land, fire trucks, Sheriff vehicles, ambulances, ATV's and news macks were in the area to assist in the rescue of potential survivors of the crash, the National Transportation Safety Board also was involved in the recovery of the airplane and clean up of the fuel from the crash.

The road surface, which was flat and hard and easily accessible for the residents' vehicles, now is full of potholes—and ditches making it almost impassable in inclement weather.

The residents are requesting that the road be returned to its original condition prior to the airplane crash.

Alt. Glein Botzeng cilled our office this morning and I was able to get some orce information from him. The plane crash itself did not damage the road. It was the responding vehicles that a used all of the damage. The road he is releading to is a small dist road that knots into the lots where the homes are located. The individuals who live there got together and the coast who could allord it, paid to have the dur handed in for the read and for a topping par down to form a crust on it.

After the plane crash the National Transportation and Salety Board, Pire and Rescue vehicles, news crows and other agencies responding to the crash site caused substantial damage to the read making it nearly impossible for the buildowners who have conservantler vehicles to navigate. He said that the state owns over half or the loss there not did not contribute to the funding for binding the oughed read. State and County vehicles such as the Department of Forestry, Florida Fish and Wildlife and utility vehicles use the read on a regular basis.

When they asked for assistance with repairing the road to the condition it was in prior to the crash, they were told a real private road so no funding is available. Had that road not been there for these agencies to use, it would have been considerably more expensive for them to clear a way to gain access to the eash site.

Thanks for taking a look at this for us. Afr. Betzong can be reached at 321-536-3600 it you need to speak to buy, directly.

Karen L. Whaley District Aide to Representative Ben Albritton District 66 150 North Central Avenue



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC 2 6 2012

The Honorable Marco Rubio United States Senator 201 S. Orange Avenue, Suite 350 Orlando, Florida 32801

Dear Senator Rubio:

Thank you for your November 30, 2012, correspondence to the U.S. Environmental Protection Agency, on behalf of your constituent, (6) (6) regarding a plane crash that occurred near Lake Wales, Florida, on June 7, 2012. (5) (6) is seeking restoration of a private road damaged by emergency vehicles belonging to various federal, state and local agencies that responded to the crash.

The EPA Region 4 did not deploy a responder to the scene of the plane crash. My staff has contacted the Florida Department of Environmental Protection and confirmed that the state agency did respond to the incident. (b) (6) may wish to contact Ms. Gwen Keenan, Chief, Bureau of Emergency Response, FDEP, for additional information regarding the State's response to this incident. Ms. Keenan can be reached by phone at (850) 245-2010, or in writing at the following address:

Florida Department of Environmental Protection Office of Emergency Response 3900 Commonwealth Blvd. Tallahassee, Florida 32399-3000

If you have questions or need additional information from the EPA, please contact me or the Region 4 Office of Congressional and Intergovernmental Relations at (404) 562-8327.

Sincerely,

Gwendolyn Keyes Fleming Regional Administrator

cc: Herschel Vinyard, Secretary, FDEP

Gwen Keenan, Chief Bureau of Emergency Response, FDEP

United States Senate

WASHINGTON, DC 20510

June 3, 2014

The Honorable Barack Obama President of the United States The White House 1600 Pennsylvania Avenue NW Washington, DC 20500

Dear President Obama:

We write to express our concerns with your proposed rule for existing power plants emissions of greenhouse gases.

Our primary concern is that the rule as proposed will result in significant electricity rate increases and additional energy costs for consumers. These costs will, as always, fall most heavily on the elderly, the poor, and those on fixed incomes. In addition, these costs will damage families, businesses, and local institutions such as hospitals and schools. The U.S. Chamber of Commerce recently unveiled a study indicating that a plan of this type would increase America's electricity bills, decrease a family's disposable income, and result in job losses.

This proposed rule continues your Administration's effort to ensure that American families and businesses will pay more for electricity, an important goal emphasized during your initial campaign for President, and suffer reduced reliability as well. Removing coal as a power source from the generation portfolio – which is a direct and intended consequence of your Administration's rule – unnecessarily reduces reliability and market flexibility while increasing costs. As you are aware, low-income households spend a greater share of their paychecks on electricity and will bear the brunt of rate increases.

In your haste to drive coal and eventually natural gas from the generation portfolio, your Administration has disregarded whether EPA even has the legal authority under the Clean Air Act to move forward with this proposal, the dubious benefit of prematurely forcing the closure of even more base load power generation from America's electric generating fleet, and the obvious signal this past winter's cold snap sent regarding our continued need for reliable, affordable coal-fired generation.

In fact, your existing source proposal goes beyond the plain reading of the Clean Air Act, and it, like your Climate Action Plan, includes failed elements from the cap-and-trade program rejected by the United States Senate. You need only look back to June 2008 for a repudiation of that type of approach by the United States Senate. On June 2, 2008, the Senate debate began on S. 3036,

the Climate Security Act, a cap-and-trade bill, and ended in defeat on June 6, when the Senate refused to invoke cloture. Since that time, Majority Leader Harry Reid has avoided votes that would provide a record of the Senate's ongoing and consistent disapproval of your unilateral action.

Including emissions sources beyond the power plant fence as opposed to just those emissions sources inside the power plant fence creates a cap-and-trade program. As you noted in the wake of the initial failure of cap-and-trade, "There are many ways to skin a cat," and your Administration seems determined to accomplish administratively what they failed to achieve through the legislative process.

At a time when manufacturers are moving production from overseas to the U.S. and investing billions of dollars in the process, we are very concerned that an Administration with a poor management record decided to embark on a plan that will result in energy rationing, pitting power plants against refineries, chemical plants, and paper mills, for the ability to operate when coming up against EPA's emissions requirements. A management decision that eliminates access to abundant, affordable power puts U.S. manufacturing at a competitive disadvantage.

Moreover, there is substantial reason and historical experience to justify our belief that at the end of the rulemaking process, EPA will use its authority to constrain State preferences with respect to program design, potentially going so far as dictating policies that restrict when American families can do the laundry or run the air conditioning. Such impositions practically guarantee that costs, which will of course be passed along to ratepayers, will be maximized, the size and scope of the federal government will expand, and the role of the States in our system of cooperative federalism will continue to diminish.

Finally, we are concerned that there is almost no assessment of costs that will be imposed by this program. Again, if history is any guide, the costs imposed on U.S. businesses and families will be significant and far exceed EPA's own estimate. More disturbingly, the benefits that may result from this unilateral action – as measured by reductions in global average temperature or reduced sea level rise, or increase in sea ice, or any other measurement related to climate change that you choose – will be essentially zero. We know this because in 2009, your former EPA Administrator testified that "U.S. action alone would not impact world CO2 levels." If these assumptions are incorrect, please don't hesitate to provide us with the data that proves otherwise.

We strongly urge you to withdraw this rule.

Mith M. Comell

Sincerely,

kn Bozman Win Fotels

Yohn Comp Wike Croso Den Mr. Clark Michael B Enj llon Kin Chuck Grasley Richard Shalf

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

SEP 18 2014

OFFICE OF AIR AND RADIATION

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of June 3, 2014, to President Obama regarding the Clean Power Plan for Existing Power Plants that was signed by the U.S. Environmental Protection Agency Administrator Gina McCarthy on June 2, 2014, and published in the *Federal Register* on June 18, 2014. The President asked that I respond on his behalf.

Climate change induced by human activities is one of the greatest challenges of our time. It already threatens human health and welfare and our economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet. Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions.

The Clean Power Plan aims to cut energy waste and leverage cleaner energy sources by doing two things. First, it uses a national framework to set achievable state-specific goals to cut carbon pollution per megawatt hour of electricity generated. Second, it empowers the states to chart their own paths to meet their goals. The proposal builds on what states, cities and businesses around the country are already doing to reduce carbon pollution, and when fully implemented in 2030, carbon emissions will be reduced by approximately 30 percent from the power sector across the United States when compared with 2005 levels. In addition, we estimate the proposal will cut the pollution that causes smog and soot by 25 percent, avoiding up to 100,000 asthma attacks and 2,100 heart attacks by 2020.

Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country to learn more about what programs are already working to reduce carbon pollution. These meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way generate power in this country is diverse, complex and interconnected.

We appreciate your views about the effects of the proposal. As you know, we are currently seeking public comment on the proposal, and we encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule. The public comment period remains open and all comments submitted, regardless of method of submittal, will receive the same consideration. The public comment period will remain open for 120 days, until October 16, 2014. We have submitted your letter to the rulemaking docket, but additional comments can be submitted via any one of these methods:

- Federal eRulemaking portal: http://www.regulations.gov. Follow the online instructions for submitting comments.
- E-mail: <u>A-and-R-Docket@epa.gov</u>. Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR–2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,

Janet G. McCabe

Acting Assistant Administrator

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United States Senate

WASHINGTON, DC 20510

October 23, 2014

The Honorable Gina McCarthy Administrator Environmental Protection Agency 1300 Pennsylvania Avenue, NW Washington, DC 20460 The Honorable John M. McHugh Secretary of the Army 101 Army Pentagon Washington, D.C. 20310-0101

Re:

Proposed Rule to Define "Waters of the United States" Docket ID No. EPA-HW-OW-2011-0880

Dear Administrator McCarthy and Secretary McHugh,

Despite numerous requests for the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) to withdraw the proposed "waters of the United States" rule, the Administration has shown it intends to pursue this unprecedented executive overreach, regardless of the consequences to the economy and to Americans' property rights. The proposed rule would provide EPA and the Corps (as well as litigious environmental groups) with the power to dictate the land use decisions of homeowners, small businesses, and local communities throughout the United States. With few exceptions, it would give the agencies virtually unlimited regulatory authority over all state and local waters, no matter how remote or isolated such waters may be from truly navigable waters. The proposed rule thus usurps legislative authority and Congress's decision to predicate Clean Water Act jurisdiction on the law's foundational term, "navigable waters."

Because the proposed "waters of the United States" rule displaces state and local officials in their primary role in environmental protection, it is certain to have a damaging effect on economic growth. Increased permitting costs, abandoned development projects, and the prospect of litigation resulting from the proposed rule will slow job-creation across the country. Similar concerns led the Small Business Administration's Office of Advocacy (SBA) to recently call for the withdrawal of the proposed rule. As SBA observed, the proposed rule will result in a "direct and potentially costly impact on small businesses," and the "[t]he limited economic analysis which [EPA and the Corps] submitted with the rule provides ample evidence of a potentially significant economic impact." We join SBA and continue to urge EPA and the Corps to withdraw the proposed rule.

Undoubtedly, there is a disconnect between regulatory reality and the Administration's utopian view of the proposed "waters of the United States" rule. We believe this reflects the EPA's and the Corps' refusal to listen to the thousands of Americans who have asked that the proposed rule be immediately withdrawn. Indeed, there have been several examples of bias against the proposed rule's critics. For the record, we note that the Administration has manipulated this rulemaking in ways that appear to be designed to prejudge the outcome:

¹ Letter from SBA to the Hon. Gina McCarthy and Maj. Gen. John Peabody re: Definition of "Waters of the United States" Under the Clean Water Act (Oct. 1, 2014), available at http://www.sba.gov/sites/default/files/Final_WOTUS%20Comment%20Letter.pdf.

Bias Factor #1: The Obama Administration Claims That the Proposed "Waters of the United States" Rule Responds to Prior Requests for a Clean Water Act Rulemaking.

EPA has repeatedly claimed that the proposed "waters of the United States" rule responds to various requests for the agency to clarify the scope of Clean Water Act jurisdiction. Likewise, the Administration stated last month that the proposed rule "is responsive to calls for rulemaking from Congress, industry, and community stakeholders as well as decisions of the U.S. Supreme Court."

Such assertions are wholly misleading. A request for a regulatory clarification does not provide a license to run roughshod over the property rights of millions of Americans. Yet the Obama Administration has used prior rulemaking requests as an excuse to unilaterally advance a regulatory agenda that defies the jurisdictional limits established by Congress when it enacted the Clean Water Act in 1972.

In fact, the proposed rule would harm the very landowners, small businesses, and municipalities that expressed interest in working with EPA and the Corps to address Clean Water Act jurisdictional issues. Thus, rather than respond to requests for a rulemaking, the proposed rule serves as an example for why so few Americans trust EPA.

Bias Factor #2: The Obama Administration Insinuates That Opposition to the Proposed Rule Is Equivalent to Opposition to Clean Water.

When EPA Administrator Gina McCarthy announced the proposed "waters of the United States" rule last March, she professed that the proposed rule "clarifies which waters are protected, and which waters are not." Similarly, EPA's Office of Water has suggested that those who "choose clean water" should support the proposed rule.⁴

These statements insinuate that the proposed rule's critics oppose clean water. This is an insulting ploy that belies the numerous efforts made in recent years by agriculture, industry, and local officials to improve water quality throughout the country. It ignores the fact that nonfederal waterbodies are subject to local and state water quality regulations. Moreover, the Clean Water Act's emphasis that "[i]t is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution" negates the canard that choosing clean water requires acceding to unlimited federal regulatory authority.⁵

² Executive Office of the President, Office of Management and Budget, Statement of Administration Policy re: H.R. 5078 (Sept. 8, 2014).

³ U.S. Environmental Protection Agency, EPA Administrator Gina McCarthy Gives an Overview of EPA's Clean Water Act Rule Proposal, YOUTUBE (Mar. 25. 2014), http://www.youtube.com/watch?v=ow-n8zZuDYc.

⁴ Travis Loop, *Do You Choose Clean Water*?, GREENVERSATIONS: AN OFFICIAL BLOG OF THE U.S. EPA Sept. 9, 2014), http://blog.epa.gov/blog/2014/09/do-you-choose-clean-water/.

⁵ Federal Water Pollution Control Act § 101, 33 U.S.C. § 1251 (emphasis added).

<u>Bias Factor #3:</u> EPA Has Attempted to Delegitimize Questions and Concerns Surrounding the Proposed Rule.

Administrator McCarthy has described certain questions regarding the proposed rule as "ludicrous" and "silly." Stakeholders have also observed how EPA officials have responded to concerns over the proposed rule with misrepresentations and a "knock on their intelligence."

EPA's disparaging of the proposed rule's critics serves no one. If EPA believes concerns with the proposed rule are unwarranted, the appropriate course of action would be for the agency to respond formally in the context of the notice and comment procedures accompanying the current rulemaking. Belittling the proposal's critics only furthers the impression that EPA has predetermined the outcome of the "waters of the United States" rulemaking.

Bias Factor #4: EPA and the Corps Have Blatantly Misrepresented the Impacts of Increased Clean Water Act Jurisdiction.

EPA and the Corps have attempted to downplay the substantial outcry over the proposed "waters of the United States" rule as well as the prospect of federalizing thousands of ditches, ponds, streams, and other waterbodies. They have done so by claiming that the impacts associated with increased Clean Water Act jurisdiction are insignificant.

For example, EPA claims the proposed rule "would not infringe on private property rights," and that the Clean Water Act "is not a barrier to economic development." The Corps has also stated that "when privately-owned aquatic areas are subject to Clean Water Act jurisdiction . . . [that] results in little or no interference with the landowner's use of his or her land."

These assertions strain credulity. Given the history of regulatory and land use issues associated with the Clean Water Act (including numerous congressional hearings, Supreme Court cases, and real world examples of costs and hardship resulting from affirmative jurisdictional determinations), it is astonishing that any federal agency would claim that a designation of private property as "waters of the United States" does not affect the landowner's property rights.

⁶ Chris Adams, EPA Sets Out to Explain Water Rule That's Riled U.S. Farm Interests, NEWS & OBSERVER (July 9, 2014), http://www.newsobserver.com/2014/07/09/3995009/epa-sets-out-to-explain-water.html.

⁷ Letter from J. Mark Ward, Senior Policy Analyst and General Counsel, Utah Assoc. of Counties, to Gina McCarthy and Bob Perciasepe, U.S. Environmental Protection Agency (July 18, 2014), available at http://www.kfb.org/Assets/uploads/images/capitolgovernment/utahassocofcountiesepa71814.pdf.

⁸ U.S. Environmental Protection Agency, Facts About the Waters of the U.S. Proposal, http://www2.epa.gov/sites/production/files/2014-09/documents/facts about wotus.pdf.

⁹ Finding Cooperative Solutions to Environmental Concerns with the Conowingo Dam to Improve the Health of the Chesapeake Bay: Hearing Before the Subcomm. on Water and Wildlife of the S. Comm. on Environment & Public Works, 113 Cong. 19 (2014) (Corps response to question for the record, on file with Senator David Vitter).

That such statements have come from EPA and the Corps suggests that the agencies either don't appreciate the real-world impacts of the law they're charged with administering, or they are intentionally trying to minimize the effect of the proposed rule. It is likewise not surprising that SBA, an expert agency charged with representing the views of small entities before federal agencies and Congress, has also critiqued the manner in which EPA and the Corps have estimated the proposed rule's impacts. ¹⁰

<u>Bias Factor #5:</u> EPA's Social Media Advocacy in Favor of the Proposed "Waters of the United States" Rule Prejudices the Rulemaking Process.

EPA staff are asking the public to influence the agency's view of the proposed "waters of the United States" rule. In fact, the Twitter account for EPA's Office of Water is now essentially a lobbyist for the proposed rule. A few months ago, EPA established a website called "Ditch the Myth," which declares that the proposed rule "clarifies protection under the Clean Water Act for streams and wetlands that form the foundation of the nation's water resources." The agency has now gone so far as to solicit others to seek to influence EPA regarding the proposed rule, urging social media users to "show their support for clean water and the agency's proposal to protect it." These actions raise serious questions about compliance with the Anti-Lobbying Act.

The integrity of the rulemaking process is in jeopardy, if not already tainted. EPA's social media advocacy removes any pretense that the agency will act as a fair and neutral arbiter during the rulemaking. Why should any landowner believe that EPA will seriously and meaningfully examine adverse comments regarding the proposed rule's impact on ditches, for example, when the agency has already pronounced that the proposed rule "reduces regulation of ditches"? Why should state officials believe that their concerns with the proposed rule will be fully considered, when EPA has already determined that the proposed rule "fully preserves and respects the effective federal-state partnership . . . under the Clean Water Act"? 15

EPA's social media advocacy is a firm indicator that adverse comments will receive scant attention during the rulemaking period. We question whether the "waters of the United States" rulemaking can be conducted in accordance with the Administrative Procedure Act and its objective that agencies "benefit from the expertise and input of the parties

¹⁰ See SBA Letter, supra n.1.

¹¹ DITCH THE MYTH, http://www2.epa.gov/uswaters/ditch-myth.

¹² U.S. Environmental Protection Agency, *Water Headlines for the Week of September 9, 2014*, http://water.epa.gov/aboutow/ownews/waterheadlines/May-6-2014-Issue.cfm.

¹³ See 18 U.S.C. § 1913 (prohibiting the use of appropriated federal funds for the "personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation").

¹⁴ See DITCH THE MYTH, supra note 11.

¹⁵ See id.

who file comments with regard to [a] proposed rule" and "maintain a flexible and open minded attitude towards its own rules." 16

We are dismayed that the Administration has failed to adhere to its impartial obligations under the law. Moreover, this bias has been reflected in comments from NGOs as well. Based on similar statements from groups such as Organizing for Action, Natural Resources Defense Council, and Clean Water Action, it is as though the Administration and its environmentalist allies are of one mindset, eager to paint the proposed rule's critics as anything other than concerned citizens.

At the same time, although the above groups are entitled to have a misguided and flawed perspective on the proposed "waters of the United States" rule, the Administration owes the American people a higher level of discourse. To date, however, this rulemaking has been plagued by administrative bias and prejudicial grandstanding. It is therefore incumbent on EPA and Corps to reverse course, withdraw the proposed rule, and commit to working more cooperatively with interested stakeholders in future regulatory proceedings.

Sincerely,

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McClouth Steel Prod. Corp. v. Thomas, 838 F.2d 1317, 1325 (D.C. Cir. 1988) (interpreting 5 U.S.C. § 553; internal quotations omitted). See also Letter from Waters Advocacy Coalition to EPA Administrator Gina McCarthy and Secretary of the Army John M. McHugh re: Proposed Rule to Define "Waters of the United States" (Sept. 29, 2014) ("The [Administrative Procedure Act] does not allow [EPA and the Corps] to keep altering the regulatory landscape throughout the rulemaking process. Indeed, the public cannot be expected to provide meaningful comment on a moving target."), available at http://www.fb.org/tmp/uploads/wacletter092914.pdf.

Chuck Grasley Join Hal John Borzman Marco Jerry Moran Rand Paul



FEB -4 2015



The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your October 23, 2014, letter to the U.S. Environmental Protection Agency and the U.S. Department of the Army regarding the EPA's and the U.S. Department of the Army's proposed rulemaking to define the scope of the Clean Water Act consistent with science and the decisions of the Supreme Court. The agencies' current rulemaking process is among the most important actions we have underway to ensure reliable sources of clean water on which Americans depend for public health, a growing economy, jobs, and a healthy environment.

We appreciate your concern regarding the importance of working effectively with the public as the rulemaking process moves forward. We are actively working to respond to this critical issue. In order to afford the public greater opportunity to benefit from the EPA Science Advisory Board's reports on the proposed jurisdictional rule and on the EPA's draft scientific report, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," and to respond to requests from the public for additional time to provide comments on the proposed rule, the agencies extended the public comment period on the proposed rule to November 14, 2014.

During the public comment period, the agencies met with stakeholders across the country to facilitate their input on the proposed rule. We talked with a broad range of interested groups including farmers, businesses, states and local governments, water users, energy companies, coal and mineral mining groups, and conservation interests. In October 2014, the EPA conducted a second small business roundtable to facilitate input from the small business community, which featured more than 20 participants that included small government jurisdictions as well as construction and development, agricultural, and mining interests. Since releasing the proposal in March, the EPA and the Corps conducted unprecedented outreach to a wide range of stakeholders, holding nearly 400 meetings all across the country to offer information, listen to concerns, and answer questions. The agencies recently completed a review by the Science Advisory Board on the scientific basis of the proposed rule and will ensure the final rule effectively reflects its technical recommendations. These actions represent the agencies' commitment to provide a transparent and effective opportunity for all interested Americans to participate in the rulemaking process.

It is important to emphasize that the proposed rule would reduce the scope of waters protected under the Clean Water Act compared to waters covered during the 1970s, 80s, and 90s to conform to decisions of the Supreme Court. The rule would limit Clean Water Act jurisdiction only to those types of waters that have a significant effect on downstream traditional navigable waters - not just any hydrologic

connection. It would improve efficiency, clarity, and predictability for all landowners, including the nation's farmers, as well as permit applicants, while maintaining all current exemptions and protecting public health, water quality, and the environment. It uses the law and sound, peer-reviewed science as its cornerstones.

America thrives on clean water. Clean water is vital for the success of the nation's businesses, agriculture, energy development, and the health of our communities. We are eager to define the scope of the Clean Water Act so that it achieves the goals of protecting clean water and public health, and promoting jobs and the economy.

Thank you again for your letter. We look forward to working with Congress as our Clean Water Act rulemaking effort moves forward. Please contact us if you have additional questions on this issue, or your staff may contact Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at borum.denis@epa.gov or (202) 564-4836, or Mr. Chip Smith in the Office of the Assistant Secretary of the Army (Civil Works) at charles.r.smith567.civ@mail.mil or (703) 693-3655.

Sincerely,

-Ellen Darcy

Assistant Secretary of the Army (Civil Works)

U.S. Department of the Army

Kenneth J. Kopocis

Deputy Assistant Administrator for Water U.S. Environmental Protection Agency

Kemeth J. Kopous

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United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP WASHINGTON, DC 20510-6350

Tell Prioria: (202) 224-5175 FAX: (202) 224-5619

June 10, 2015

The Honorable Gina McCarthy Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, DC 20460

Dear Administrator McCarthy:

We write to express our serious concerns that the U.S. Environmental Protection Agency (EPA) is failing to follow the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), as it proceeds with formulation and implementation of the president's controversial Clean Power Plan. As members of the Senate Committee on Small Business and Entrepreneurship, we are deeply troubled by evidence that EPA is failing to fully comply with the law, as well as the negative economic and long-term impacts that the agency's regulatory actions will have on small entities in America.

On April 30, 2015, EPA convened a Small Business Advocacy Review (SBAR) panel to address the "development of a proposed rulemaking that will regulate [CO2] emissions from [Electricity Generating Units] that are not part of an approved state plan for the emissions guidelines" under Section 111(d) of Clean Air Act (CAA). On May 8, 2015, the Small Business Administration's (SBA) Office of Advocacy (Advocacy) wrote a letter to EPA finding that the agency had not properly committed itself to the SBAR process. It is absolutely essential for a federal agency to appropriately comply with all relevant laws during the rulemaking process.

As you know, the RFA requires EPA to convene a SBAR panel before publishing a proposed rule that the agency determines will have a significant economic impact on a substantial number of small entities.² In conducting a SBAR panel, EPA has 60 days to consider input from sources that include Advocacy and small entity representatives (SERs), to review relevant EPA background and analytical materials, and to prepare a report detailing the potential impacts of the rule on small entities and ways to reduce those burdens.³ Yet Advocacy's May 8 letter raises genuine concerns regarding the extent to which EPA has complied with the RFA in conducting its panel on the proposed Clean Power Plan rule. We are particularly troubled to learn that "[m]aterials provided to the SERs on May 1 do not describe potential regulatory alternatives under development or economic impacts," and that the "description of the proposed rule is a

¹ Letter from Claudia Rogers, Acting Chief Counsel for Advocacy, to Gina McCarthy, Administrator, U.S. Envt'l. Protection Agency (May 8, 2015) (on file with the U.S. S. Comm. on Small Bus. and Entrepreneurship). ² 5 U.S.C. § 609 (1996).

 $^{^3}$ 1d.

discussion of broad outlines of policies and factors EPA may be considering. . . which EPA has not released and to which the SERs have no access."

We are further troubled by Advocacy's conclusion that the materials supplied by EPA provide "little information with which the SERs could evaluate the potential impact on their individual generating units or facilities," which severely limits SERs' abilities to discuss costs, benefits and alternatives to the rule.⁵ In short, EPA failed to fully comply with the requirements of the RFA.

Roughly one month has passed since EPA received Advocacy's letter, and we have been told that the agency has not yet responded to or otherwise modified its approach to the panel to address Advocacy's concerns. Additionally, we have learned that EPA has been entirely unprepared for some of the SBAR panel's meetings, thereby undermining productivity and making it appear as though EPA does not prioritize its obligations to small entities as it must do under the RFA.

Given the limited time remaining in the SBAR process, we request that EPA immediately provide a detailed account to Advocacy and to the members of the Senate Small Business Committee on how it intends to address the issues raised in Advocacy's May 8, 2015 letter. Please direct this information to the Committee's majority office, Senate Russell Room 428A, and/or to Luke Tomanelli at Luke Tomanelli@sbc.senate.gov by Friday, June 19, 2015.

Additionally, once Advocacy has confidence in the steps being taken by EPA to address its concerns, we also request that EPA provide a detailed briefing to this Committee on solutions to remedy this issue moving forward. Finally, the deadline for SERs to submit written comments to the proposed Clean Power Plan rule was Friday, May 29, 2015. We remind you that it is a statutory requirement that EPA thoroughly review and consider all SER feedback and incorporate it into the agency's final rule.⁶

Congress clearly intended for the SBAR panel to provide necessary protections to small businesses. In order to adequately protect small entities throughout the rulemaking process in accordance with the law, the process must be thorough and must assess and incorporate the input of the small business community. As EPA proceeds with the SBAR panel, we strongly urge the agency to work cooperatively with Advocacy and the SERs. The integrity of this process – and the confidence that small entities have in it – requires no less.

Sincerely,

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⁴ Letter from Claudia Rogers, supra note 1.

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6 5 U.S.C. § 609(b) (1996).

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Rand Paul

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cc: Claudia Rogers, Acting Chief Counsel for Advocacy, Office of Advocacy, SBA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

SEP 1 1 2015

OFFICE OF AIR AND RADIATION

The Honorable Marco Rubio Committee on Small Business & Enterprenership United States Senate Washington D.C. 20510

Dear Senator Rubio:

Thank you for your letter dated June 10, 2015, to U.S. Environmental Protection Agency Administrator Gina McCarthy, in which you raise concerns regarding the Small Business Advocacy Review (SBAR) panel for the EPA's proposed rulemaking on August 3, 2015, "Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014" (proposed Federal Plan). The Administrator asked that I respond on her behalf.

The proposed Federal Plan is an outgrowth of the Clean Power Plan for existing power plants, also called the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units (79 FR 34830) that were finalized on August 3, 2015. The EPA takes seriously our obligations to small entities and will comply fully with both the spirit and the letter of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In May, the EPA held several meetings with the Small Entity Representatives (SERs) to present the agency's current thinking about regulatory options for the proposed Federal Plan.

As required by section 609(b) of the RFA, the EPA also convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from small entity representatives that potentially would be subject to the rule's requirements. The SBAR Panel evaluated the assembled materials and small entity comments on issues related to elements of an RFA. A copy of the full SBAR Panel Report is available in the rulemaking docket (EPA-HQ-OAR-2015-0199), which will be available when the proposed federal plan publishes in the Federal Register. The discussions with the SBAR Panel were robust and, as you will see from the report, yielded a number of suggestions that we have either incorporated with the proposed Federal Plan or are taking comment on.

While the SBAR panel itself has been completed, EPA encourages all stakeholders to submit comments via docket number EPA-HQ-OAR-2015-0199. The comment period will be open for 90 days following publication in the Federal Register. The EPA will take comments received from small businesses and other stakeholders into account as we craft the final rulemaking.

The EPA will accept comments on the proposed federal plan for 90 days following publication in the Federal Register. Comments on the proposed federal plan requirements, identified by Docket ID No. EPA-HQ-OAR-2015-0199, can be submitted by one of the following methods:

- Federal Rulemaking Portal www.regulations.gov: Follow the online instructions for submitting comments.
- Email: Send your comments via electronic mail to a-and-r-Docketa@epa.gov, Attention Docket ID No. EPA-HQ-OAR-2015-0199.
- Facsimile: Fax your comments to (202) 566 9744, Attention Docket ID No. EPA-HQ-OAR-2015-0199.
- Mail: Send your comments to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode: 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2015-0199. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 724 17th Street NW, Washington, DC 20503.
- Hand Delivery: Deliver your comments to: EPA Docket Center, Room 3334, EPA West Building, 1301 Constitution Ave., NW, Washington, DC, 20004, Attention Docket ID No. EPA-HQ-OAR-2015-0199. Such deliveries are accepted only during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays) and special arrangements should be made for deliveries of boxed information.

For more information about these final and proposed rules, visit http://www2.epa.gov/cleanpowerplan. Supportive materials are available through our website and my staff have been, and will continue to be, available to provide technical assistance to stakeholders regarding the EPA's rules to address carbon pollution from power plants.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or (202) 564-2998.

Sincerely,

Janet G. McCabe

Acting Assistant Administrator

Jet B. Melal

COMMITTEES

COMMERCE SCIENCE, AND TRANSPORTATION

FOREIGN RELATIONS

SELECT COMMITTEE ON INTELLIGENCE

SMALL BUSINESS AND ENTREPRENEUPSHIP

United States Senate

WASHINGTON, DC 20510 December 16, 2015

The Honorable Gina McCarthy Administrator Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, DC 20460

Dear Administrator McCarthy:

On December 4, 2015, Commissioner Adam Putnam of the Florida Department of Agriculture and Consumer Services requested a FIFRA Section 18 specific exemption request on behalf of the Florida Fruit and Vegetable Association for the use of antimicrobials in diseased citrus trees. I respectfully request you review the petition as expeditiously as possible.

Florida's citrus industry has long been a pillar of Florida's economy, not only responsible for millions of jobs and billions' worth of economic activity, but also serving as a proud symbol of our state. Huanglongbing (HLB), better known as greening, originated in China and has been devastating to Florida's workers and our economy. Since 2005, Florida has lost approximately 100,000 citrus acres. From 2006 to 2010, \$4.5 billion in revenue was lost due to the disease. This iconic industry, which represents \$9 billion, is in dire need of help. Just this month, the National Agricultural Statistics Service of the U.S. Department of Agriculture further downgraded Florida's orange-harvest outlook to 69 million boxes. Compared to the 2014 season of 96.8 million boxes, this year's crop will be the worst for Florida since 1963-1964.

With the latest downgrade in citrus yield, Florida citrus growers are in desperate need to fight this fast spreading disease. You will see that the petition shows that these products will aid in strengthening diseased trees, suppress greening, and potentially yield a better crop.

While I am confident that innovation stemming from our state and national research science programs will eventually find a cure to this disease, we should provide citrus farmers some degree of relief in dealing with this natural disaster. I respectfully request this petition receive the careful consideration it deserves, and with the urgency this time sensitive issue entails.

Respectfully,

Marco Rubio U.S. Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAR 3 0 2016

OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your December 16, 2015 letter, to the U.S. Environmental Protection Agency supporting the Florida Department of Agriculture and Consumer Services' application for emergency use of streptomycin sulfate, oxytetracycline hydrochloride and oxytetracycline calcium to control Huanglongbing disease, commonly known as HLB or citrus greening.

On March 4, 2016, the EPA concurred with the FDACS request to declare a crisis thereby allowing growers to begin using the above-mentioned antibiotic pesticides to suppress citrus greening disease in Florida citrus while the EPA makes a final decision on the emergency use application. As part of the final decision, the EPA is working closely with the Centers for Disease Control and Prevention and the U.S. Food and Drug Administration to help ensure that use will be protective of impacts from resistant bacteria.

The EPA has been working for many years with the FDACS and the Florida Fruit and Vegetable Association to provide tools to citrus growers to help to manage HLB and citrus canker. We participate in regularly scheduled sessions to discuss developments, ongoing research, new technologies and agricultural practices, with the intent of finding safe, effective ways of controlling this devastating pest problem. In addition, we are currently participating in the U.S. Department of Agriculture's Huanglongbing Multi-Agency Coordination System that funds research to develop tools to control HLB. In this capacity, the EPA is assisting in the technical review of HLB mitigation research. In addition to the recent request from FDACS, we have approved an emergency exemption for use of the insecticide clothianidin as a soil drench treatment for Florida citrus growers. This use helps provide for management of the Asian citrus psyllid which is the insect that vectors HLB on citrus trees.

The EPA appreciates your interest and understanding of the Section 18 emergency exemption process as a mechanism to support growers with urgent pest management situations. As you know, in February 2016, members of our senior management team met with your staff and several other staff from the Florida congressional delegation to discuss the issue and to brief them on the status of the Section 18 request. You can be certain that the EPA will continue in our capacity to support the Florida citrus industry's fight against the devastating effects of Huanglongbing disease.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may contact Mr. Sven Erik Kaiser in the EPA's Office of Congressional and Intergovernmental Relations at kaiser.sven-erik@epa.gov or (202) 566 2753.

Sincerely,

James J. Jones

Assistant Administrator



Office of U.S. Senator Marco Rubio

201 S. Orange Ave., Suite 350 Orlando, FL 32801 Phone 407-254-2573 Fax 407-423-0941

Laura Vaught Associate Administrator for Congressional and Intergovernmental From: David Huff

To:

Relations

Environmental Protection Agency

Pages: Date: 2/4/2015 2 (Including cover) 202-501-1519 Fax: Re:

Comments:

I would greatly appreciate it if you could review this matter and provide a response. Please address your response to Senator Marco Rubio c/o David Huff at 201 S. Orange Ave., Suite 350, Orlando, FL 32801.

Best Regards,

David Huff Constituent Services Representative David Huffarubio.scnate.gov (407) 318-2728

01/27/2015 12:36 FAX



Office of U.S. Senator Marco Rubio Privacy Act Consent Form

In accordance with the provisions of The Privacy Act of 1974 (Public Law 93-579), your written consent is required so that we may contact a federal agency on your behalf. Since e-mails do not contain a valid signature, they do not fulfill the requirements of the law. If you are inquiring on behalf of another person that to 18 or older, it is necessary that he or she sign this document. All information must be written in English,

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Please return the completed form:

201 S. Orange Avenue, Suite 350

Orlando, Florida 32801

By fax:

(407) 423-0941

By email:

casework@rubio.senate.gov

If you have any questions, please call the Orlando Regional Office at (407) 254-2573 or (866) 630-7106, toll-free in Florida.

SEM	MARCO	RUBIO		
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COMPLETE THE SECTION THAT APPLIES TO YOUR CASE

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WASHINGTON, D.C. 20460

MAR 0 4 2015

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS

Mr. Martin Kodis Chief, Division of Congressional and Legislative Affairs U.S. Fish and Wildlife Service 5275 Leesburg Pike Falls Church, VA 22041

Dear Mr. Kodis:

The Environmental Protection Agency received correspondence dated February 4, 2015, from Senator Marco Rubio, forwarding a letter from his constituent (b) (6). In his letter to the Senator, (b) (6) expressed concerns about the Tomarec government intent on building a school on land that is the habitat for endangered species. Since this issue falls within your Department's purview, please respond directly to the Senator so he may in turn provide a response to (b) (6).

Thank you and if you have any questions, please feel free to contact me at 202-564-7178 or your staff may contact Sven-Erik Kaiser at 202-566-2753 or email Kaiser.sven-erik@epa.gov.

Sincerely,

Nichole Distefano

Deputy Associate Administrator for Congressional Affairs

Enclosure

cc: Senator Marco Rubio

PAT TOOMEY
CHAIRMAN
JAMES WALLNER
EXECUTIVE DIRECTOR

United States Senate

SENATE STEERING COMMITTEE

April 3, 2014

The Honorable Gina McCarthy Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, D.C. 20460

Dear Administrator McCarthy:

We write to you today regarding our concerns about the Environmental Protection Agency's (EPA) proposed rule to significantly expand its permitting authority over American farmers, construction workers, miners, manufacturers and private landowners, among others, by unilaterally changing the definition of "waters of the United States" under the Clean Water Act. We believe that this proposal will negatively impact economic growth by adding an additional layer of red tape to countless activities that are already sufficiently regulated by state and local governments.

This proposed rule will do little to clarify the ambiguities of Clean Water Act regulation. In fact, the agency's proposed interpretation of "significant nexus" is vague enough to allow EPA to assert its jurisdiction over waters not previously regulated, rather than to curtail its jurisdiction, as the agency suggests. Furthermore, the rule continues to incorporate the Kennedy "sufficient nexus" test that arose out of *Rapanos v. United States* (547 U.S. 715 (2006)) without meaningfully addressing the Scalia test that also arose out of that ruling. Specifically, Justice Scalia called for jurisdictional waters to mean only *relatively permanent*, *standing or flowing bodies of water*, such as streams, rivers, lakes, and other bodies of water "forming geographic features." This definition leads him to exclude "channels containing merely intermittent or ephemeral flow." We feel there is no justification for EPA's failure to respond in detail to the equally important interpretation put forth by Justice Scalia.

We also take issue with EPA's reckless disregard for the science that will apparently underpin this ruling. The report, titled *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*, has not been finalized, and Science Advisory Board peer review for the report is not yet complete. For EPA to propose a rule without

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¹ 547 U.S. at 732-33, emphasis added.

² *Id.* At 733-34.

the supposed foundational scientific document firmly in place both violates the spirit of the Administrative Procedures Act, as well as OMB and agency circulars. It is our belief that EPA should withdraw this proposed ruling until such time as the Science Advisory Board completes its review of the *Report* and the *Report* is finalized. Failure to do so puts the legitimacy of the *Report*, and thus, the underlying science of the rule, in doubt, and creates the impression that the EPA intends to finalize this rule on its own whims, rather than on the validity of the science.

Finally, we understand that EPA is currently soliciting comments from the public on this proposal. Given the serious impact that this proposal will have on our constituents, if enacted, we request that you give all due consideration to the correspondence that you receive and extend the comment period to the full 180 days as provided by current law.

We appreciate your prompt attention to this matter.

Sincerely,

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WASHINGTON, D.C. 20460

NOV 1 4 2014

OFFICE OF WATER

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your April 3, 2014, letter to the U.S. Environmental Protection Agency regarding the U.S. Department of the Army's and the EPA's proposed rulemaking to define the scope of the Clean Water Act consistent with science and the decisions of the Supreme Court. The agencies' current notice and comment rulemaking process is among the most important actions we have underway to ensure reliable sources of clean water on which Americans depend for public health, a growing economy, jobs, and a healthy environment.

I appreciate your concern regarding the importance of working effectively with the public as the rulemaking process moves forward. The agencies are actively working to respond to this critical issue. In order to afford the public greater opportunity to benefit from the EPA Science Advisory Board's reports on the proposed jurisdictional rule and on the EPA's draft scientific report, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," and to respond to requests from the public for additional time to provide comments on the proposed rule, the agencies extended the public comment period on the proposed rule to November 14, 2014.

Your letter expresses concerns regarding how the proposed rule incorporates decisions of the Supreme Court. The agencies based their proposed rule on the text of the Clean Water Act and relevant Supreme Court decisions on this important issue. As you note, the proposed rule is based significantly on these Supreme Court decisions, including Justice Kennedy's opinion in Rapanos v. United States, 547 U.S. 715 (2006), which lays out a "significant nexus" test for Clean Water Act jurisdiction. The agencies' proposed rule includes a proposed definition for "significant nexus," on which the agencies are seeking comments.

During the public comment period, the agencies are meeting with stakeholders across the country to facilitate their input on the proposed rule. We are talking with a broad range of interested groups including farmers, businesses, states and local governments, water users, energy companies, coal and mineral mining groups, and conservation interests. The EPA recently conducted a second small business roundtable to facilitate input from the small business community, which featured more than 20 participants that included small government jurisdictions as well as construction and development, agricultural, and mining interests. Since releasing the proposal in March, the EPA and the Corps have conducted unprecedented outreach to a wide range of stakeholders, holding nearly 400 meetings all across the country to offer information, listen to concerns, and answer questions. The agencies recently completed a review by the Science Advisory Board on the scientific basis of the proposed rule and will ensure the final rule effectively reflects its technical recommendations. These actions represent the

agencies' commitment to provide a transparent and effective opportunity for all interested Americans to participate in the rulemaking process.

It is important to emphasize that the proposed rule would reduce the scope of waters protected under the Clean Water Act compared to waters covered during the 1970s, 80s, and 90s to conform to decisions of the Supreme Court. The rule would limit Clean Water Act jurisdiction only to those types of waters that have a significant effect on downstream traditional navigable waters - not just any hydrologic connection. It would improve efficiency, clarity, and predictability for all landowners, including the nation's farmers, as well as permit applicants, while maintaining all current exemptions and protecting public health, water quality, and the environment. It uses the law and sound, peer-reviewed science as its cornerstones.

America thrives on clean water. Clean water is vital for the success of the nation's businesses, agriculture, energy development, and the health of our communities. We are eager to define the scope of the Clean Water Act so that it achieves the goals of protecting clean water and public health, and promoting jobs and the economy.

Thank you again for your letter. We look forward to working with Congress as our Clean Water Act rulemaking effort moves forward. Please contact me if you have additional questions on this issue, or your staff may contact Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at borum.denis@epa.gov or (202) 564-4836.

Sincerely,

Kenneth J. Kopocis

Deputy Assistant Administrator

Keweth J. Kopocis



Office of U.S. Senator Marco Rubio

201 S. Orange Ave., Suite 350 Orlando, FL 32801 Phone 407-254-2573 Fax 407-423-0941

Laura Vaught

Associate Administrator for

Congressional and Intergovernmental

To:

From: David Huff

Environmental Protection Agency

Pages: 3 (Including cover)

Date: 9/9/2015

202-501-1519 Fax:

ASSIGNED to: David Huff)

Comments:

The Office of Senator Marco Rubio would appreciate your review and response of this matter. Please address your response to Senator Marco Rubio c/o David Huff at 201 S. Orange Ave., Suite 350, Orlando, FL 32801.

Best Regards,

David Huff Constituent Services Representative David_Huff@rubio.senate.gov (407) 254-2573



Office of U.S. Senator Marco Rubio Privacy Act Consent Form

In accordance with the provisions of The Privacy Act of 1914 (Public Law 93.579), your written consent is required so that we may contact a feastal agency on your behalf. Since e-molts do not contain a valid signature, they do not fujfill the requirements of the law. All information on this form must be written in English.

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Page 2 of 2



REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

10T - 2 2015

The Honorable Marco Rubio United States Senator 201 South Orange Avenue Suite 350 Orlando, Florida 32801

Dear Senator Rubio:

Thank you for your September 9, 2015, correspondence to the U.S. Environmental Protection Agency, Region 4 office, on behalf of your constituent (b) (6) who expressed concerns with ecological conditions at Spruce Creek (the Creek) near Port Orange, in Volusia County, Florida. (b) (6) is concerned that the Florida East Coast (FEC) railroad bridge, which crosses over the Creek is adversely impacting the ecology of the Creek.

The Florida Department of Environmental Protection (FDEP) completed water quality evaluations of the Creek in the vicinity of the FEC bridge, which has been in place since the 1880s. The FDEP determined that the Creek was impaired by low dissolved oxygen and nutrients, and established Total Maximum Daily Loads (TMDL) to address these impairments in 2008. The TMDLs identified a 27 percent reduction of total phosphorus loading to the Creek and a 25 percent reduction in biological oxygen demand loading to the Creek. Currently, the FDEP is working with Volusia County, the towns of Port Orange and New Smyrna Beach and local landowners/stakeholders to achieve these water quality based targets to improve the ecological condition of lower Spruce Creek. If (b) (6) wishes to participate in the ongoing water quality improvement activities taking place in the lower Spruce Creek watershed, or if he wants to learn more about ongoing Spruce Creek water quality improvement activities we suggest he contact Dave Herbster at the FDEP Orlando office. Mr. Herbster may be reached at (407) 897-2944 or at dave.herbster@dep.state.fl.us.

If you have questions or need additional information from the EPA, please contact me or Allison Wise, in the Region 4 Office of Government Relations at (404) 562-8327.

Sincerely,

Heather McTeer Toney Regional Administrator

cc: Mr. Dave Herbster

FDEP



WASHINGTON, D.C. 20460

SEP 1 3 2016

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

The U.S. Environmental Protection Agency's (EPA) Superfund program is proposing to add the Post and Lumber Preserving Co. Inc. site, located in Quincy, Florida, to the National Priorities List (NPL) by rulemaking. The EPA received a governor/state concurrence letter supporting the listing of this site on the NPL. Listing on the NPL provides access to federal cleanup funding for the nation's highest priority contaminated sites.

Because the site is located within your state, I am providing information to help in answering questions you may receive from your constituency. The information includes a brief description of the site and a general description of the NPL listing process.

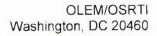
If you have any questions, please contact me or your staff may contact Raquel Snyder, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-9586. We expect the rule to be published in the Federal Register in the next several days.

Sincerely,

Mathy Stanislaus

Assistant Administrator

Enclosures





NATIONAL PRIORITIES LIST (NPL)

Proposed Site

September 2016

POST AND LUMBER PRESERVING | Quincy, Florida CO. INC. | Gadsden County

Site Location:

The Post and Lumber Preserving Co. Inc. site is an 18-acre property located at the northeast corner of Post Plant Road and Havana Highway in Quincy, Florida. The site is in a rural setting with several residences near the facility.

△ Site History:

Between 1948 and 1990, wood preserving operations were conducted at the facility using both pentachlorophenol (PCP) and chromated copper arsenate (CCA). An on-site pond was used for the collection of waste materials and was later converted to an on-site surface impoundment. The site drains into an unnamed tributary of the Little River. The facility is now abandoned. The site is partially fenced but is not secured.

■ Site Contamination/Contaminants:

Soil, sediment and ground water are contaminated with pentachlorophenol (PCP), arsenic and dioxin. Dioxins, furans and arsenic have been found in levels above Save Drinking Water Act Maximum Contaminant Levels (MCLs) in ground water migrating from the surface impoundment.

** Potential Impacts on Surrounding Community/Environment:

Dioxin and arsenic contamination have been found in the wetlands surrounding the site and in the creek leading from the site to the Little River. The Little River is classified as a recreational river by the state of Florida. In addition, the site's surface impoundment contains high levels of wood preserving-related wastes and is likely a source of ground water contamination.

Response Activities (to date):

In 1987 the waste materials from the on-site pond were consolidated into the current surface impoundment, and capped. In 1996, the EPA conducted a time-critical removal action to address contaminated on-site surface soils and remove remaining tanks and drums. Lastly, since 1996 the Florida Department of Environmental Protection (FLDEP) has removed additional soils both on-site and off-site, including soils at several nearby residential properties. In addition, FLDEP placed a temporary cover over the surface impoundment.

Need for NPL Listing:

The state of Florida referred the site to the EPA because of the contamination in the shallow ground water at the site and the need to investigate the extent of the contamination in off-site wetlands and downstream sediments. Other federal and state cleanup programs were evaluated, but are not viable at this time. The EPA received a letter in support of proposing to add this site to the NPL from the state.

[The description of the site (release) is based on information available at the time the site was evaluated with the HRS. The description may change as additional information is gathered on the sources and extent of contamination. See 56 FR 5600, February 11, 1991, or subsequent FR notices.]

For more information about the hazardous substances identified in this narrative summary, including general information regarding the effects of exposure to these substances on human health, please see the Agency for Toxic Substances and Disease Registry (ATSDR) ToxFAQs. <u>ATSDR ToxFAQs</u> can be found on the Internet at http://www.atsdr.cdc.gov/toxfaqs/index.asp or by telephone at 1-800-CDC-INFO or 1-800-232-4636.



NATIONAL PRIORITIES LIST (NPL)

WHAT IS THE NPL?

The National Priorities List (NPL) is a list of national priorities among the known or threatened releases of hazardous substances throughout the United States. The list serves as an information and management tool for the Superfund cleanup process as required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances.

There are three ways a site is eligible for the NPL:

1. Scores at least 28.50:

A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (HRS), which EPA published as Appendix A of the National Contingency Plan. The HRS is a mathematical formula that serves as a screening device to evaluate a site's relative threat to human health or the environment. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for inclusion on the NPL. This is the most common way a site becomes eligible for the NPL.

2. State Pick:

Each state and territory may designate one top-priority site regardless of score.

3. ATSDR Health Advisory:

Certain other sites may be listed regardless of their HRS score, if all of the following conditions are met:

- a. The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Department of Health and Human Services has issued a health advisory that recommends removing people from the site;
- b. EPA determines that the release poses a significant threat to public health; and
- c. EPA anticipates it will be more cost-effective to use its remedial authority than to use its emergency removal authority to respond to the site.

Sites are first proposed to the NPL in the *Federal Register*. EPA then accepts public comments for 60 days about listing the sites, responds to the comments, and places those sites on the NPL that continue to meet the requirements for listing. To submit comments, visit www.regulations.gov.

Placing a site on the NPL does not assign liability to any party or to the owner of any specific property; nor does it mean that any remedial or removal action will necessarily be taken.

For more information, please visit www.epa.gov/superfund/sites/npl/.

Mims, Kathy

From:

Senator Marco Rubio (imailagent) <Services@rubio.senate.gov>

Sent:

Wednesday, December 21, 2016 11:35 AM

To:

OCIRmail

Subject:

From the Office of U.S. Senator Marco Rubio (Intranet Quorum IMA00392566)

Attachments:

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Dear Ms. Distefano,

Enclosed you will find correspondence I received from my constituent (b) (6) s, regarding request for an investigation into the Lake Monrow Mit Bank for the pollution of the Saint Johns River.

I respectfully request your review of this matter and response directly to (b) (6)

Thank you for your time and attention to this matter.

Sincerely,

Marco Rubio United States Senator

Each week I provide a weekly update on issues in Washington and ways in which my office can assist the people of Florida. Sign up <u>here</u> for updates on my legislative efforts, schedule of events throughout Florida, constituent services and much more.



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Office of U.S. Senator Marco Rubio Privacy Act Consent Form

In accordance with the provisions of The Privacy Act of 1974 (Public Law 93-579), your written consent is required so that we may contact a federal agency on your behalf. Since e-mails do not contain a valid signature, they do not fulfill the requirements of the law.

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*Signature:		
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-	e of impediate family members, are nic Signatures are not valid.	e not acceptante. Pederat agencies with not release information without the signed consent of the

PLEASE RETURN THE COMPLETED FORM BY MAIL, FAX, OR EMAIL:

Address: U.S. Senator Marco Rubio

:n

Fax:

(844) 762-1556

Phone:

(407) 254-2573

201 South Orange Avenue, Suite 350

E-mail: casework@rubio.senate.gov

Toll-free: (866) 630-7106

Orlando, Florida 32801

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REGION 4 ATLANTA FEDERAL CENTER 61 FORSYTH STREET ATLANTA, GEORGIA 30303-8960

FEB - 8 2017

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your December 8, 2016, email to the U.S. Environmental Protection Agency, on behalf of your constituent, (b) (6) concerning the potential for pollution and lack of inspections at the Lake Monroe Mitigation Bank, in the St. Johns River Basin in northeast Florida. Specifically, his concern involves the potential for untreated stormwater to travel from this mitigation bank to the St. Johns River. (b) (6) requests several actions by the U.S. Army Corps of Engineers (USACE) and he requested that the EPA investigate whether the mitigation bank is polluting the St. Johns River.

The operation of this mitigation bank was formerly the responsibility of the Florida Department of Transportation, which has since passed the responsibility on to the Saint Johns River Water Management District (SJRWMD). The responsibility for oversight of the mitigation bank program rests with the USACE, who is responsible for inspections, as well as ensuring proper design, operations and eventual sun-setting of mitigation banks used within the national wetlands program. Although the EPA and other federal agencies, like the Fish and Wildlife Service and the Soil Conservation Service, consult with and advise the USACE on mitigation banks, the EPA does not issue permits to these facilities, nor does it inspect water flowing from mitigation banks to other waters of the United States.

The EPA has reached out to the SJRWMD and to the USACE to relay concerns. The appropriate contacts at these agencies for inquiries about these matters are:

Mr. Reid Hilliard St. Johns River Water Management District Maitland Service Center 601 South Destiny Drive, Suite 200 Maitland, Florida 32751

Mr. Jon Griffin
Mitigation Team Leader
US Army Corps of Engineers
Jacksonville District
Regulatory Division
P.O. Box 4970
Jacksonville, Florida 32232-0019

If you have questions or need additional information from the EPA, please contact me or Allison Wise, in the Region 4 Office of Government Relations, at (404) 562-8327.

Sincerely,

. Anne Heard

Acting Regional Administrator

cc: Ms. Debbie Wegman

USACE

United States Senate

WASHINGTON, DC 20510

February 17, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Dear Administrator Pruitt:

We write to request a 120-day extension of the 60-day public review and comment period currently established by the U.S. Environmental Protection Agency (EPA) for its proposed rule, "Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry," which was published in the Federal Register on Jan. 11, 2017 (82 FR 3388). This additional time will provide state agencies, local governments, and other affected stakeholders an opportunity to thoroughly examine the contents of this proposal and provide the agency constructive comments.

This proposed rule is a far reaching proposal that will have significant impacts on the mining industry as well as other natural resources industry sectors including chemical manufacturing, oil and gas, and electric utilities. The EPA's Regulatory Impact Analysis estimates that the "financial responsibility amount for the regulated industry is \$7.1 billion." According to its own data, the proposed rule will require hardrock mining companies to incur up to \$171 million per year in new financial assurance costs, while only saving the government \$15.5 million per year. It is our understanding that the affected industries' estimates put the cost of this new federal program even higher. In short, cost of compliance will discourage domestic mineral production and lead to significant job losses in the hard rock mining sector.

The current 60-day comment period, which ends on March 13, 2017, is woefully inadequate to review, evaluate, and prepare meaningful public comments on this complex rulemaking. When the proposed rule was first printed in the Federal Register, it spanned 124 pages and was dwarfed by technical supporting documents and relevant materials that the EPA has cross-referenced as part of the index to the docket. As of the date of this letter, there are now more than 2,300 supporting documents exceeding 323,969 pages, more than half of which were added after the original publication. To make matters worse, key tools that are intended to help affected stakeholders determine the impact of the proposed rule and estimate financial responsibility obligations were not made publicly available by the agency until just recently.

It is important to note that the agency only established a 60-day public comment period for this proposal, a limited window typically afforded to noncontroversial proposals on revisions to existing programs. This proposal is classified as a Tier 1 rule, reserved for the most important and complex rules, and establishes

an entirely new federal regulatory program. Given these facts, it is clear an extension of the public review and comment period is necessary.

Thank you for your prompt consideration of this request. Please do not hesitate to contact our offices if we can be of further assistance.

Sincerely,

Dean Heller

U.S. Senator

Liéa Murkowski

Lisa Murkowski U.S. Senator

James E. Risch

Mike Crapo U.S. Senator

Orrin Hatch

U.S. Senator

Dan Sullivan

U.S. Senator

James M. Inhofe U.S. Senator

Marco Rubio

U.S. Senator

Steve Daines

Michael S. Lee. U.S. Senator

U.S. Senator

Cory Gardner U.S. Senator

cc: Mr. Donald Benton, White House Liaison, U.S. Environmental Protection Agency

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WASHINGTON, D.C. 20460

APR 2 6 2017

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

NOW THE OFFICE OF LAND AND EMERGENCY MANAGEMENT

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter to extend the public comment period for the proposed *Financial Responsibility Requirements under CERCLA Section 108(b) for Classes of Facilities in the Hardrock Mining Industry* rule which was published in the *Federal Register* on January 11, 2017 (see 82 FR 3388).

We appreciate your interest in this proposed rule. The U.S. Environmental Protection Agency extended the comment period, and comments on the proposed rule are now due by July 11, 2017.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Carolyn Levine in the EPA's Office of Congressional and Intergovernmental Relations at levine.carolyn@epa.gov or at (202) 564-1859.

Barry N. Breen

Acting Assistant Administrator



WASHINGTON, D.C. 20460

JUL 3 1 2017

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

NOW THE OFFICE OF LAND AND EMERGENCY MANAGEMENT

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

The U.S. Environmental Protection Agency's (EPA) Superfund program will be adding the Post and Lumber Preserving Co. Inc. site, located in Quincy, Florida, to the National Priorities List (NPL) by rulemaking. The EPA received a governor/state concurrence letter supporting the listing of this site on the NPL. Listing on the NPL provides access to federal cleanup funding for the nation's highest priority contaminated sites.

Because this site is located within your state, I am providing information to help in answering questions you may receive from your constituency. The information includes a brief description of the site and a general description of the NPL listing process.

If you have any questions, please contact me or your staff may contact Raquel Snyder, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-9586. We expect the rule to be published in the Federal Register in the next several days.

Barry N. Breen

Acting Assistant Administrator

Enclosures

United States Senate

WASHINGTON, DC 20510

THANSPORTATION
FOREIGN RELATIONS

COMMETTEES:
COMMERCE, SCIENCE, AND

SELECT COMMITTEE ON INTELLIGENCE

SMALL BUSINESS AND ENTREPRENEURSHIP

September 21, 2016

The Honorable Gina McCarthy Administrator Environmental Protection Agency 1200 Pennsylvania Ave., N.W. Washington, D.C. 20460

Dear Administrator McCarthy,

As Hurricane Hermine moved through the Tampa Bay region, it left in its wake an environmental issue that appears to have been wholly preventable and, as recently reported in a whistleblower complaint, should have been foreseen and dealt with a number of years ago. Although the State of Florida is currently investigating the situation, I request the Environmental Protection Agency (EPA) assist the State of Florida in assessing this spill brought on by the City of St. Petersburg.

According to recent reports, the City of St. Petersburg released about 151 million gallons of raw and partially-treated sewage into Tampa and Boca Ciega Bays. The exact amount of the release is actually unknown due to a broken flow meter out of the wastewater treatment plant. The sewage release occurred after the City's wastewater treatment plants were overwhelmed during Hurricane Hermine, a result of the City's decision to close one of its plants in 2015. I believe the residents of Pinellas County deserve to know what, and how much, was released into their waterways and how it may affect the water quality in the area.

It is troubling that the City itself cannot agree on what was contained in the sewage released, and this begs the question of whether this was a factor in City officials' decision not to tell the public about the release until five days after it occurred. In fact, a whistleblower, Mr. Craven Askew, claims the City was aware a sewage spill could happen and did nothing to halt the release. It is my understanding that previous spills in 2015 and 2016 were conveyed by consultants to the City as early as 2014, and that City leadership chose not to act and instead moved forward with closing the Albert Whitted Water Reclamation Facility even after being advised against it. It is important that residents know if their City leadership turned a blind eye towards the inevitability of a sewage spill at the cost of the local waterways and beaches.

Tampa Bay's waters are a cherished and economically fruitful ecosystem. I am concerned its rebounded sea grasses will suffer now and into the future, especially because we are not yet done with the current hurricane season and another storm could yield another disturbing spillage. For these reasons, I welcome the EPA's immediate assistance into this matter, and stand ready to work with you to fix these problems.

Respectfully

S Senitor



REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

OCT 11 2016

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your September 21, 2016, letter to Gina McCarthy, Administrator, U.S. Environmental Protection Agency, concerning the sewer discharges into Tampa and Boca Ciega Bays by the City of St. Petersburg (the City).

The Clean Water Act establishes programs, including the National Pollutant Discharge Elimination System program, which gives state agencies the authority to conduct the day-to-day implementation of the program. In accordance with that authority, the Florida Department of Environment Protection (FDEP) is authorized to implement the program in Florida.

The City is the owner and operator of the following wastewater treatment facilities and associated wastewater collection/transmission systems serving the City and other portions of Pinellas County:

- 1. Albert Whitted Water Reclamation Facility 12.4 MGD
- 2. Northeast Water Reclamation Facility 16 MGD
- 3. Northwest Water Reclamation Facility 20 MGD
- 4. Southwest Water Reclamation Facility 20 MGD
- St. Petersburg Master Reuse System 68.4 MGD (Plant Capacity is measured in MGD – Million Gallons per Day)

Between August 31, 2016, and September 13, 2016, the City experienced unpermitted discharges of sewage from several of its wastewater treatment facilities. There were reports of 20 inches of rain falling within a 48 hour timeframe, which resulted in the release of an unknown volume of untreated sewage overflows at manholes. Between 78 and 93 million gallons of partially treated sewage were also released through the emergency outfall at the Albert Whitted Water Reclamation Facility, as a result of this rainfall event. The EPA is aware of the recent overflows and is investigating the situation. We have been in communication with the City, State and concerned citizens, and are working with the FDEP to ensure that it is appropriately addressed.

If you have questions or need additional information from the EPA, please contact me or Allison Wise, in the Region 4 Office of Government Relations, at (404) 562-8327.

Sincerely,

Heather McTeer Toney Regional Administrator

Congress of the United States

Washington, DC 20515

September 21, 2011

The Honorable Lisa P. Jackson Administrator United States Environmental Protection Agency 1200 Pennsylvania Ave, NW Washington, DC 20460

Dear Administrator Jackson:

It has come to our attention that the Environmental Protection Agency (EPA) recently denied the Minnesota Center for Environmental Advocacy's (MCEA) petition requesting that the EPA set numeric nutrient water quality standards for the Mississippi River and the Gulf of Mexico. As representatives of the only state in the nation subject to EPA numeric nutrient standards, we hope that EPA's cooperative approach to the Mississippi River basin signals that EPA will immediately reconsider its unilateral actions in Florida.

In a letter dated July 29th to the Legal Director of MCEA, the EPA outlines several nation-wide efforts the Agency has made to address nutrient loadings throughout the country. The letter states that "the most effective and sustainable way to address widespread and pervasive nutrient pollution in the MARB and elsewhere is to build on these efforts and work cooperatively with states and tribes to strengthen nutrient management programs." Furthermore, the Agency states it is "exercising its discretion to allocate its resources in a manner that supports targeted regional and state activities to accomplish our mutual goals of reducing N and P pollution and accelerating the development and adoption of **state approaches** to controlling N and P." [Emphasis added.]

As you know, the State of Florida is the only state that EPA has overtaken with Federal regulations to address nutrients in water bodies. Notably, all of the national efforts outlined in the Agency's July 29th letter to MCEA equally apply to Florida. Additionally, in the EPA's own words, "Florida has developed and implemented some of the most progressive nutrient management strategies in the Nation."

Recognizing this good work in our state, on April 22nd, Secretary Vineyard of the Florida Department of Environmental Protection formally requested that EPA withdraw its Federal nutrient rules and instead allow Florida to manage nutrient loadings in its own waters. EPA has declined to accept this request, despite the clear evidence that Florida has been a national leader in water quality management. The state has invested millions of dollars into the EPA-approved TMDL program and has seen remarkable water quality improvements because of its work. In singling out Florida for federal nutrient criteria promulgation, however, EPA has continued to ignore the effective steps Florida has taken to manage nutrient loadings to its state waters.

Given your Agency's recent response to MCEA's petition and the efforts taken by our state agencies to properly implement nutrient control programs, we question the EPA's justification for ignoring the work in the State of Florida by declining to respond to the petition filed by the state on April 22nd. While we recognize the geographical differences in setting criteria for a region versus a single state, we fail to see the need for the Agency to continue to intervene in the State of Florida for the very reasons that the Agency denied MCEA's petition – the issue is best addressed by the states in cooperation with the EPA. The current regulatory scheme in Florida simply does not reflect cooperation. Furthermore and most importantly, it is our understanding that, by declining to simply take action on the DEP petition, the EPA has created further regulatory uncertainty for many of the employers in Florida eager to create more jobs for our constituents.

Consistent with the cooperative federalism envisioned by Congress in the Clean Water Act, we ask that the EPA immediately withdraw its decision to impose numeric nutrient criteria in Florida and place our state on a level playing field with states in the Mississippi River watershed and throughout the rest of the nation. Specifically, and to this end, we respectfully request that you immediately grant the petition filed on April 22nd by the State of Florida so that the state can move forward in protecting Florida's waters and businesses can move forward in creating more jobs in our state with newfound regulatory certainty.

Given the importance of this issue and the vast economic implications of inaction, we look forward to your prompt response.

Respectfully,

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WASHINGTON, D.C. 20460

DEC - 1 2011

OFFICE OF WATER

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of September 21, 2011, asking the Environmental Protection Agency (EPA) to reconsider its actions in Florida and grant the petition from the Florida Department of Environmental Protection (FDEP) to withdraw the numeric nutrient criteria promulgated by the EPA in Florida. You cite the EPA's recent denial of a petition for rulemaking by the Minnesota Center for Environmental Advocacy (MCEA) in which the Agency supported regional and state activities to accelerate the development and adoption of state approaches to controlling nitrogen and phosphorus pollution.

The EPA denied MCEA's petition because the Agency believes that the most effective and sustainable way to address widespread nitrogen and phosphorus pollution in the Mississippi-Atchafalaya River Basin (MARB) is to build on existing efforts, including providing technical assistance and collaborating with states to achieve near-term reductions, supporting states on development and implementation of numeric criteria, and working cooperatively with states and tribes to strengthen management programs. While the EPA denied MCEA's petition, it does not constitute a determination that new or revised water quality standards for nutrients are not needed in the MARB. The EPA is using its discretion not to make that determination at this time.

As outlined in the Agency's January 2009 determination and our recent response to FDEP's petition, we continue to believe that numeric nutrient criteria are necessary to meet the requirements of the Clean Water Act in the State of Florida, whether these criteria are promulgated by FDEP or by the EPA. The EPA supports FDEP's continued focus on reducing nitrogen and phosphorus pollution and commends the State's commitment to move forward with its rulemaking efforts for both inland and estuarine/coastal waters. In addition, both FDEP and the EPA share a strong and mutual commitment to assuring that the best data, science and technical analysis support the State's proposed revisions.

As you may know, the EPA has recently extended the deadlines of the court—ordered schedule for the proposal and final federal rules for numeric nutrient criteria for Florida's estuarine and coastal waters and southern Florida inland waters. The deadline for the proposed numeric nutrient criteria is extended to March 15, 2012. The deadline for the final rulemaking is extended to November 15, 2012. This extension will allow the EPA to consider the valuable feedback that we have received on criteria development from local experts from the FDEP and various Estuarine Programs and Water Management Districts in the State of Florida.

The EPA affirmed in its June 13, 2011, letter to FDEP that if the State adopts and the EPA approves protective nutrient criteria that are sufficient to address the concerns underlying its determination and rule, the EPA will promptly initiate rulemaking to repeal the corresponding federally-promulgated numeric nutrient criteria. The EPA also stated that if the March 2012 effective date is approaching but further steps were needed for Florida rule's to take effect, such as ratification by the Legislature, we will propose, through rulemaking, an additional extension of the effective date to enable Florida to complete such steps. In addition, the EPA stated that if FDEP adopts and the EPA approves criteria for any waters for which the EPA has not yet proposed or promulgated federal criteria, the EPA will not propose or promulgate (as appropriate) corresponding federal criteria.

The EPA has reviewed FDEP's October 24, 2011 draft rule on numeric nutrient criteria for inland and estuarine waters. In my November 2, 2011 letter to FDEP's Secretary Vinyard, I shared the EPA's preliminary evaluation to affirm our support for FDEP's efforts to address nutrient pollution. While the EPA's final decision to approve or disapprove any numeric nutrient criteria rule submitted by FDEP will follow our formal review of the rule and record under section 303(c) of the CWA, our current evaluation of the October 24, 2011 draft rule and related guidance leads us to the preliminary conclusion that the EPA would be able to approve the draft rule under the CWA. Should the EPA formally approve FDEP's final numeric nutrient criteria consistent with the CWA, the EPA would initiate rulemaking to withdraw federal numeric nutrient criteria for any waters covered by the new and approved state numeric water quality standards.

The EPA would like to see the State of Florida succeed in developing its own criteria. We will continue working with the State by offering technical support, expertise, feedback and other assistance in order to develop defensible numeric nutrient standards that meet the goals of the Clean Water Act, reduce and prevent the harmful effects of nutrient pollution, and protect the economy and public health of the State.

Again, thank you for your letter. If you have further questions, please contact me, or have your staff call Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4836.

Sincerely,

Nancy K. Stoner

Acting Assistant Administrator

Congress of the United States Washington, DC 20515

June 21, 2012

The Honorable Lisa Jackson Administrator United States Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, DC 20450

Dear Administrator Jackson:

As members of the Florida Congressional Delegation, we write to respectfully request your formal review and approval of the Florida Department of Environmental Protection's (FDEP) numeric nutrient criteria rules in their entirety. In regards to EPA's response on April 18, 2012 to our March 5, 2012 letter, we are pleased to inform you that the recent ruling on June 7 by Administrative Law Judge Bram D. E. Canter upheld FDEP's numeric nutrient standard rules, which now have been officially adopted.

The State of Florida has committed significant time, energy, and resources over the past several years studying and collecting data regarding nutrients, which has resulted in these high standards based on sound scientific evidence. We share the mutual interest in ensuring that Florida's unique and critical bodies are protected against nutrient pollution, and we are confident these rules, which have the full support of the Florida legislature, members of the Cabinet, and now the court, will do just that without imposing an unwarranted economic burden on Floridians. We believe that these FDEP rules obviate any need for federal numeric nutrient criteria rulemakings in our state.

We applaud FDEP's dedication to improve our state's water quality and appreciate EPA's efforts in working with FDEP during the review process. While we understand that EPA scientists have already confirmed that FDEP's rules are accurate, we look forward to your support, final approval, and your withdrawal of the January 2009 determination that Florida needs federal numeric nutrient criteria.

MARCO RUBIO

Member of Congress

STEVE SOUTHERLAND, II

Member of Congress

JEHF MILKER

CORRINE BROWN

Member of Congress

ANDER CRENSHAW Member of Congress **DANIEL WEBSTER** Member of Congress C. W. BILL YOUNG Member of Congress

ERN BUCHANAN
Member of Congress

BILL POSEY
Member of Congress

ILEANA ROS-LEHTINEN

MARIO DIAZ-PALARI Member of Congress

Member of Congress



Member of Congress

ALCEE L. HASTINGS
Member of Congress

SANDY ADAMS
Member of Congress

DAVID RIVERA

Member of Congress



WASHINGTON, D.C. 20460

JUL 2 5 2012

OFFICE OF WATER

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of June 21, 2012, to the U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson, requesting formal review and approval of the Florida Department of Environmental Protection (FDEP) numeric nutrient criteria rule.

The EPA appreciates that the State of Florida has committed significant time, energy, and resources in collecting and analyzing nutrient data and formulating this rule. Having formally received FDEP's numeric nutrient rules on June 13th, the EPA is in the process of evaluating the rule for its scientific defensibility and protectiveness of the state's waterways, as prescribed by the Clean Water Act and the EPA's 2009 determination that Florida needs numeric nutrient criteria.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at 202-564-4836.

Sincerely,

Nancy K. Stoner

Acting Assistant Administrator

1053632

United States Senate

WASHINGTON, DC 20510

April 6, 2011

The Honorable Barack H. Obama President of the United States The White House 1600 Pennsylvania Avenue, NW Washington, DC 20500

Dear Mr. President:

As rising gasoline prices threaten our nation's economic recovery, we welcome your acknowledgement of the positive impact which increased domestic supplies of oil and gas will have for American families and businesses. In your speech on March 30, you stated, "producing more oil in America can help lower oil prices, create jobs, and enhance our energy security."

We agree, and we also share the goal of reducing our dependence on foreign oil. It is an achievable goal, as we know we have the resources to control our energy future. A recent report from the Congressional Research Service detailed our vast energy resources, showing America's recoverable resources are far larger than those of Saudi Arabia, China, and Canada combined. America's combined recoverable oil, natural gas, and coal endowment is the largest on Earth – and this is without including America's immense oil shale and methane hydrates deposits.

However, it is not just rhetoric that is keeping us from achieving the goals you outlined of lowering energy prices, creating jobs, and reducing our reliance on foreign energy. Rather, we are concerned that these goals are in direct conflict with certain ongoing actions of your Administration. In particular, the policies being carried out by the Environmental Protection Agency (EPA) and the Department of the Interior (DOI) directly and negatively impact oil and gas production and prices, as well as electricity prices for businesses and consumers. These policies hang heavy over the economy, with the promise of making our existing energy resources more expensive for Americans, and serve to inhibit future growth.

With consumers again facing \$4.00/gallon gasoline, the EPA is pursuing job-killing greenhouse gas regulations that, like the failed cap-and-trade legislation, will serve as an energy tax on every consumer. The Affordable Power Alliance recently studied the impacts of this action and found that the price of gasoline and electricity could increase as much as 50 percent. To make matters worse, the EPA acknowledges that unilateral action by the United States will have no impact on the world's climate, as China and India dramatically increase their emissions.

You also referenced efforts within the Administration to encourage domestic oil and gas production, yet since taking office, DOI has done exactly the opposite. In 2009, 77 oil and gas leases in Utah were cancelled, and the following year 61 additional leases were suspended in Montana. In December 2010, your Administration announced that its 2012-2017 lease plan would not include new areas in the eastern Gulf of Mexico or off the Atlantic coast – though these two areas hold commercial oil reserves of 28 billion barrels and up to 142 trillion cubic feet of natural gas. Delaying access to these areas not only hinders the production of domestic energy, but also means the loss of up to \$24 billion in federal revenue. In Alaska, the EPA has failed to issue valid air quality permits for offshore exploration after over 5 years of bureaucratic

wrangling, although no human health risk is at issue and over 25 billion barrels of oil may be discovered. EPA has also contributed to the continuing delay of production from the National Petroleum Reserve-Alaska – an area specifically designated by Congress for oil and gas development.

Last year, American oil production reached its highest level since 2003. The Energy Information Administrator (EIA) Richard Newell recently pointed out that the 2010 production numbers are likely the result of new leases issued during the previous administration that are just recently beginning to produce oil. Unfortunately, in the Gulf of Mexico, offshore energy production is expected to decrease by 13 percent in 2011. This decrease is cited as the result of the moratorium and the slow pace of permitting. EIA's most recent short-term energy outlook projects that domestic crude oil and liquid fuels production is expected to fall by 110,000 bbl/d in 2011, and by a further 130,000 bbl/d in 2012. To date, only 8 deepwater permits have been issued during the past 12 months, and most of these operations were started before the Macondo well blowout.

At your State of the Union Address, you called for a review of job-killing regulations within your Administration. We believe the Administration hereby has the keys to unlock our domestic energy potential today. As this review is underway, and with recognition of the toll higher energy prices are taking on Americans, we respectfully encourage you to examine the damage these current policies are having on the economy, and to work to reconcile these contradictions.

Respectfully,

Daid Vitter

from the 11 feet

Rand Vand

The Honorable Barack H. Obama Page Three

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Sayby Chamblin Par Robert	Rogerdwicker
·	<u></u>

The Honorable Barack H. Obama Page Five

Signers in order of signature (left to right):

John Cornyn, United States Senator James Inhofe, United States Senator David Vitter, United States Senator John Thune, United States Senator Jim DeMint, United States Senator Ron Johnson, United States Senator Rand Paul, United States Senator Kelly Ayotte, United States Senator Jeff Sessions, United States Senator James E. Risch, United States Senator Thad Cochran, United States Senator Orrin Hatch, United States Senator Richard Shelby, United States Senator Jon Kyl, United States Senator Mark Kirk, United States Senator Richard Burr, United States Senator John Barrasso, United States Senator (duplicate) Lindsey Graham, United States Senator Jerry Moran, United States Senator John Boozman, United States Senator Kay Bailey Hutchison, United States Senator Roy Blunt, United States Senator Marco Rubio, United States Senator Johnny Isakson, United States Senator Mike Enzi, United States Senator Saxby Chambliss, United States Senator Roger Wicker, United States Senator Pat Roberts, United States Senator



WASHINGTON, D.C. 20460

FEB 2 4 2012

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of April 6, 2011, co-signed by 27 of your colleagues, addressed to President Obama regarding permitting of additional oil and gas production and greenhouse gas (GHG) regulation under the Clean Air Act. I have been asked to respond with respect to actions by the U.S. Environmental Protection Agency.

On March 30, 2011, the President released the Blueprint for a Secure Energy Future, which recognizes the importance of producing domestic oil safely and responsibly, while taking steps to reduce our overall dependence on oil through increased use of cleaner, alternative fuels and greater energy efficiency. The country has already made progress towards these objectives. Last year, America produced more oil than we had since 2003. In addition, the EPA and the U.S. Department of Transportation (DOT) have worked with the auto industry, auto workers, and other stakeholders to issue new standards that will reduce our transportation sector's reliance on oil while reducing GHG emissions.

The EPA's 2012-2016 GHG standards for light duty vehicles, set jointly with fuel economy standards, are projected to save 1.8 billion barrels of oil over the lifetime of those vehicles. This program represents the first meaningful update to fuel efficiency standards in three decades. In 2010, the President announced another major agreement with industry and the auto workers for the EPA and DOT to set GHG and fuel economy standards for model years 2017-2025. On November 16, 2011, the EPA and DOT issued the proposal to extend the National Program of harmonized GHG and fuel economy standards to model year 2017 through 2025 passenger vehicles. The combination of 2011 fuel economy standards, the 2012-2016 GHG emissions and fuel economy standards, and the proposed 2017-2025 standards will dramatically cut the oil we consume, saving a total of 12 billion barrels of oil and \$1.7 trillion in fuel costs to American families. Also, the EPA on August 9 finalized standards for heavy duty trucks for model years 2014-2018 that are expected to save more than 500 million barrels of oil over the lifetime of those vehicles. These historic steps to reduce our dependence upon oil will protect our economy from the rising price of oil, reduce air pollution, and create and protect jobs in our manufacturing sector.

With respect to new production, the EPA supports an efficient process for Outer Continental Shelf (OCS) oil and gas permitting to enable domestic energy supplies to be developed safely and responsibly. The Bureau of Ocean Energy Management (BOEM) is the federal agency that provides authorization to drill. (The Department of Interior has responded separately to your letter.) The EPA's permits ensure compliance with air quality and wastewater discharge regulations, when and if drilling commences.

Arctic energy exploration raises special challenges and permitting issues not previously addressed in the Gulf of Mexico. The President's Blueprint established a cross-agency team to address these issues and facilitate a more efficient offshore permitting process in Alaska, while ensuring that safety, health, and environmental standards are fully met. The EPA participates in this team. In addition, the Agency has established a work group of regional and headquarters permit experts to help expedite resolution of OCS air permitting issues.

On December 23, 2011, the President signed into law the Consolidated Appropriations Act of 2012, which divested the EPA of the authority to issue air quality permits to OCS sources located off the North Slope Borough of the State of Alaska (not including any pending or existing air quality permit). Nonetheless, we would like to set the record straight on your claim that EPA failed to act on pending OCS permits for five years. Over the past five years, the EPA has issued nine OCS air permits to Shell, working closely with Shell on processing its permit applications, through several company decisions to change or withdraw applications, and through permit appeals. The EPA recently issued three of these air permits to Shell for exploratory oil and gas drilling on the OCS in the Chukchi and Beaufort seas and one to Shell for operations on the OCS in the Gulf of Mexico. EPA also issued air permits on the OCS in the Gulf of Mexico to Eni U.S. Operating Company and Anadarko Petroleum Corporation for drillships and support vessels. ConocoPillips Company filed an air permit application involving the OCS off Alaska for a minor source exploration project in the Chukchi Sea, but the company on September 26 withdrew the application and expressed its intent to submit a new OCS permit application in the near future.

Your letter also raised concerns about GHG regulation and the economy. The EPA is taking initial steps to reduce GHG emissions from large sources using Clean Air Act tools that have been used for the last 40 years to control traditional pollutants. These tools have proven effective and consistent with a strong economy. Since 1970, emissions of six key pollutants have dropped more than 60 percent while the size of the economy (gross domestic product) has grown more than 200 percent. The motor vehicle GHG and fuel economy standards discussed above are an example of how reducing carbon pollution and strengthening our economy can go hand in hand. Though some opponents purport to estimate the economic impacts of future GHG regulation, such estimates are without foundation as they are based on speculation about actions the agency has neither proposed nor endorsed.

By contrast, there is a strong foundation for proceeding with reasonable, measured steps to reduce GHG emissions from large emitters. The National Research Council (NRC) of the National Academies stated in a 2011 report, "Each additional ton of greenhouse gases emitted commits us to further change and greater risks. In the judgment of the [NRC] Committee on America's Climate Choices, the environmental, economic, and humanitarian risks of climate change indicate a pressing need for substantial action to limit the magnitude of climate change and to prepare to adapt to its impacts." The NRC also has emphasized that, because GHGs persist and accumulate in the atmosphere, reductions in the near-term are important in determining the extent of climate change impacts over the next decades, centuries, and millennia. The EPA's targeted actions to reduce GHG emissions from large sources will contribute to the emissions reductions required to slow or reverse the accumulation of GHG concentrations in the atmosphere.

¹ National Research Council (2011) America's Climate Choices, Committee on America's Climate Choices, Board on Atmospheric Sciences and Climate, Division on Earth and Life Studies, The National Academies Press, Washington, DC. ² National Research Council (NRC) (2011). Climate Stabilization Targets. Committee on Stabilization Targets for Atmospheric Greenhouse Gas Concentrations; Board on Atmospheric Sciences and Climate, Division of Earth and Life Sciences. National Academy Press. Washington, DC.

The nation does not have to choose between protecting jobs and protecting the public from pollution -- we can do both. A study led by Harvard economist Dale Jorgenson found that implementing the Clean Air Act actually increased the size of the US economy because the health benefits of the Clean Air Act lead to a lower demand for health care and a healthier, more productive workforce. According to that study, by 2030 the Clean Air Act will have prevented 3.3 million lost work days and avoided the cost of 20,000 hospitalizations every year. Another study that examined four regulated industries (pulp and paper, refining, iron and steel, and plastic) concluded that, "We find that increased environmental spending generally does not cause a significant change in employment."

Money spent on environmental protection does not disappear from the economy; it creates and supports jobs in engineering, manufacturing, construction, materials, operation and maintenance. For example, the environmental technologies and services industry employed 1.7 million workers in 2008 and accounted for exports of \$44 billion of goods and services. ⁵

In conclusion, the EPA is part of the administration's effort to implement the President's Blueprint for a Secure Energy Future, and believes that protecting public health and building a stronger economy go hand in hand.

Again, thank you for your letter. If you have any questions, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

Arvin R. Ganesan

Associate Administrator

³ Dale W. Jorgenson Associates (2002a). An Economic Analysis of the Benefits and Costs of the Clean Air Act 1970-1990. Revised Report of Results and Findings. Prepared for EPA. http://yosemite.epa.gov/ee/epa/eerm.nsf/vwAN/EE-0565-01.pdf

⁴ Morgenstern, R. D., W. A. Pizer, and J. S. Shih. 2002. "Jobs versus the Environment: An Industry-Level Perspective." Journal of Environmental Economics and Management 43(3):412-436.

⁵ DOC International Trade Administration. "Environmental Technologies Industries: FY2010 Industry Assessment. http://web.ita.doc.gov/ete/eteinfo.nsf/068f3801d047f26e85256883006ffa54/4878b7e2fc08ac6d85256883006c452c/\$FILE/Full%20Environmental%20Industries%20Assessment%202010.pdf (accessed February 8, 2011)

MAX BAUGUS, MONTANA
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BETUNA PORIER, MAJORITY STAFF DIRECTOR BUTH VAN MARK, MINUHITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS WASHINGTON, DC 20510-6175

May 24, 2012

The Honorable Lisa Jackson Administrator U.S. Environmental Protection Agency Ariel Rios Building 1200 Pennsylvania Avenue, NW Washington, DC 20460

Dear Administrator Jackson:

We are deeply concerned by remarks made recently by a senior Environmental Protection Agency (EPA) official regarding enforcement practices in light of the Supreme Court's recent ruling in Sackett v. EPA ("Sackett"). In its May 7, 2012, edition, Inside EPA reported:

A top EPA official is downplaying the impact of the unanimous High Court ruling that opens up Clean Water Act (CWA) compliance orders to pre-enforcement judicial review, saying it will have little effect on how the agency enforces the water law, while floating several options it is considering for new documents that may be exempt from review. "What's available after Sackett? Pretty much everything that was available before Sackett," Mark Pollins, director of EPA's water enforcement division, said. [...] "Internally, it's same old, same old."

Additionally, a BNA article from May 4, 2012, "EPA Official Sees No Major Shift In Agency's Use of Compliance Orders," also recounted Mr. Pollins' remarks downplaying the Supreme Court's decision in Sackett. It is very troubling that an EPA official with water enforcement responsibilities would believe that the Supreme Court's decision in Sackett has little effect on how the agency enforces the Clean Water Act.

As you know, in Sackett v. EPA, the Supreme Court held that EPA compliance orders are subject to pre-enforcement review by the federal courts. Compliance orders often declare that the recipient is in violation of law and threaten thousands, or even millions, of dollars in fines for the initial violations followed by thousands or millions of dollars in additional fines for not complying with the "compliance order" itself. Thus, EPA's refusal to agree to such review in the first place left the Sackett family, as it has done to many other Americans, in a state of legal limbo-at risk of substantial civil or criminal penalties if they proceeded with development of their private property but without the ability to seek a court order to determine whether EPA was acting in accordance with the Clean Water Act.

Indeed, the Sacketts faced a terrible choice: Give into EPA's overreaching involvement by foregoing the reasonable use of their private property, or force EPA's hand by proceeding with The Honorable Lisa Jackson Page 2 May 24, 2012

development of their property at the risk of bankruptcy or imprisonment. EPA afforded them no opportunity to seek a neutral arbiter's evaluation of EPA's assertion of jurisdiction. No American should be faced with that choice. In fact, the Supreme Court's 9-0 ruling strongly demonstrates the absurdity of EPA's position in this case. Regrettably, we do not believe this is an isolated case with "little effect" on EPA's practices. To the contrary, as the *Wall Street Journal* explained in a March 22, 2012 editorial, "The ordeal of the Sacketts shows once again how [EPA] with a \$10 billion budget and 17,000 agents has become a regulatory tyranny for millions of lawabiding Americans." The Congressional Research Service recently found that EPA issues over 1,000 administrative compliance orders annually, which provides ample reason to question how *Sackett* will impact the agency's approach to CWA enforcement.

The Court's decision points toward a broader concern: EPA should not use its enforcement authority to intimidate citizens into compliance. As Justice Scalia noted in the majority opinion, "There is no reason to think that the Clean Water Act was uniquely designed to enable the strong-arming of regulated parties into voluntary compliance without judicial review." Nevertheless, as evidenced by these comments made by Mr. Pollins, it seems that EPA plans to continue business as usual and sees no need to change their use of compliance orders in response to the Court's holding. In order to help us understand the steps the EPA is taking following the Sackett decision, we request you clarify the comments made by Mr. Pollins and explain how the agency's enforcement office plans to proceed in pursuing CWA enforcement in light of Sackett.

Thank you for your prompt attention to this matter.

Sincerely,

¹ CRS Report, The Supreme Court Allows Pre-enforcement Review of Clean Water Act Section 404 Compliance Orders: Sackett v. EPA (March 26, 2012).

The Honorable Lisa Jackson Page 3 May 24, 2012

Lawas Atexander

John Korzman

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WASHINGTON, D.C. 20460

JUL 1 0 2012

ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE

The Honorable James M. Inhofe Ranking Member Committee on Environment and Public Works United States Senate Washington, D.C. 20510

Dear Senator Inhofe:

Thank you for your May 24, 2012 letter to Administrator Lisa Jackson regarding the United States Environmental Protection Agency's (the EPA) plans to enforce Clean Water Act (CWA) requirements in light of the Supreme Court's decision in *Sackett v. EPA* which held that CWA section 309(a) administrative compliance orders are now subject to pre-enforcement review by the federal courts. I appreciate the opportunity to discuss the EPA's enforcement program.

The EPA will, of course, fully comply with the Supreme Court's decision as we work to protect clean water for our families and future generations by using the tools provided by Congress to enforce the CWA. The Supreme Court's decision marked a significant change in the law concerning the reviewability of Section 309(a) administrative compliance orders. Prior to the Supreme Court's decision, all five federal circuit courts to consider the question had held that Section 309(a) administrative compliance orders were not subject to pre-enforcement review. We are taking all necessary steps to ensure that compliance orders issued by the agency comply with the Court's mandate. The EPA has directed all enforcement staff to ensure that the regulated community is fully aware of the right to challenge a Section 309(a) administrative compliance order and to include language explicitly informing respondents of this right with any unilateral Section 309(a) administrative compliance order issued by the agency. Attached is a memorandum from Pamela J. Mazakas, Acting Director of the Office of Civil Enforcement, to the regions highlighting the importance of the Sackett decision and informing them of the consequent changes to the CWA enforcement program.

In your letter, you express concern about remarks made by an EPA enforcement official at the *ALI ABA Wetlands Law and Regulation Seminar* on May 3, 2012, as reported by the publications *Inside EPA* and *BNA*. Both articles focused solely on a single statement by the EPA official and implied that the *Sackett* decision has not changed the EPA's approach to enforcement of the CWA. However, this single statement taken out of context does not accurately represent the overall message from this presentation or the agency's position that the *Sackett* decision does significantly change the law concerning reviewability of CWA administrative compliance orders. The focus of the presentation and discussion at the May 3, 2012 seminar was that compliance orders issued under 309(a) of the CWA will now be subject to judicial review and that the agency will ensure that its compliance orders are supported by an administrative record that describes the factual and legal basis for the order. It was clear from the entire presentation by the EPA speaker that EPA has and will continue to exercise sound principles of evidence gathering and legal analysis to support its administrative compliance orders, and that the EPA expects that judicial review would reaffirm the factual and legal support for orders issued by the agency. The

EPA has consistently stated since the *Sackett* decision that recipients of CWA section 309(a) compliance orders must be afforded an opportunity to challenge them in court. The agency is confident in the integrity of its administrative enforcement process and, as always, will issue compliance orders only when they are well supported by the facts and the law.

Again, thank you for your letter. If you have any questions, please contact me or have your staff contact Carolyn Levine, Office of Congressional and Intergovernmental Relations, at (202) 564-1859.

Sincerely

Cynthia Giles

Enclosure



WASHINGTON, D.C. 20460

JUN 19 2012

OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Use of Clean Water Act Section 309(a) Administrative Compliance Order

Authority after Sackett v. EPA

Pamela J. Mazakas, Acting Director Samela Mazakas. Office of Civil Enforcement FROM:

TO: Addressees

As you know, on March 21, 2012, the Supreme Court ruled unanimously in Sackett v. EPA, 132 S. Ct. 1367, that administrative compliance orders issued under Section 309(a) of the Clean Water Act (CWA) are subject to pre-enforcement judicial challenge under the Administrative Procedure Act (APA). The Supreme Court's decision marked a significant change in the law concerning the reviewability of Section 309(a) administrative compliance orders. Prior to the Supreme Court's decision, all of the federal circuit courts to consider the question had held that Section 309(a) administrative compliance orders were not subject to pre-enforcement review. The purpose of this memorandum is to provide guidance on the use of Section 309(a) administrative compliance order authority in response to the Sackett decision.

As a result of the Supreme Court's holding, recipients of Section 309(a) administrative compliance orders are now afforded an opportunity to challenge those orders under the APA, before EPA brings an action to enforce the order, a right not previously available to them in the courts. It is therefore incumbent on EPA enforcement staff to ensure that the regulated community, and in particular all recipients of Section 309(a) administrative compliance orders, are fully aware of this new right. Language clearly informing respondents of this right should be included with any unilateral Section 309(a) administrative compliance order issued by the Agency.

¹ Southern Pines Assocs. v. United States, 912 F.2d 713 (4th Cir. 1990); Southern Ohio Coal Co. v. Office of Surface Mining, Reclamation & Enforcement, 20 F.3d 1418 (6th Cir.), cert. denied, 513 U.S. 927 (1994); Hoffman Group, Inc. v. EPA, 902 F.2d 567 (7th Cir. 1990); Sackett v. EPA, 622 F.3d 1139 (9th Cir. 2010), rev'd, 132 S. Ct. 1367 (2012); Laguna Gatuna, Inc., v. Browner, 58 F.3d 564 (10th Cir. 1995), cert. denied, 516 U.S. 1071 (1996).

The Supreme Court's decision presents the Agency with an opportunity to evaluate how it can make the best use of limited enforcement resources to achieve compliance with environmental laws. While issuance of Section 309(a) administrative compliance orders remains a valuable tool to ensure compliance with the CWA, enforcement staff should continue to evaluate other enforcement approaches to promote compliance where appropriate in given circumstances. Other tools, such as less formal notices of violation or warning letters, can sometimes be helpful in resolving violations.

EPA enforcement staff should continue the practice of inviting parties to meet and discuss how CWA violations (and amelioration of the environmental impacts of such violations) can be resolved as quickly as possible. The goal of the administrative enforcement process is to address violations preferably by a mutually-agreed upon resolution through measures such as an administrative compliance order on consent. Using consensual administrative compliance orders, when possible, can help to reduce EPA and third party costs where regulated entities are willing to work cooperatively to quickly correct CWA violations and abate potential harm to human health and the environment.

Finally, the judicial review of Section 309(a) administrative compliance orders provides the opportunity to be even more transparent in demonstrating the basis for our enforcement orders. The Agency has historically exercised sound principles of evidence gathering and legal analysis to support its administrative compliance orders and is confident that judicial review would reaffirm the Agency's longstanding practice. The *Sackett* decision underscores the need for enforcement staff to continue to ensure that Section 309(a) administrative compliance orders are supported by documentation of the legal and factual foundation for the Agency's position that the party is not in compliance with the CWA. This will aid in the successful defense of any Section 309(a) administrative compliance order in court, should an order be challenged, and allow us to fulfill our statutory responsibility to address violations affecting the nation's waters.

We will continue to work closely with the Regions, Office of General Counsel, and the Department of Justice on any issues identified as we continue to evaluate and respond to the Supreme Court's decision. Thank you in advance for your ongoing cooperation. If you have additional questions, please contact me or Mark Pollins at (202) 564-4001.

Addressees:

OECA Office Directors and Deputies
Regional Counsels, Regions 1 - 10
Regional Enforcement Divisions Directors, Regions 1 - 10
Regional Enforcement Coordinators, Regions 1 - 10
Water Management Division Directors, Regions 1 - 10
Randy Hill, OWM
Steve Neugeboren, OGC
Letitia Grishaw, EDS/DOJ
Steven Samuels, EDS/DOJ
Benjamin Fisherow, EES/DOJ
Karen Dworkin, EES/DOJ

United States Senate

WASHINGTON, DC 20510-0908

COMMITTEES

COMMERCE, SCIENCE, AND TRANSPORTATION

FOREIGN RELATIONS

SELECT COMMITTEE ON INTELLIGENCE

SMALL BUSINESS AND ENTREPRENEURSHIP

January 16, 2015

Gina McCarthy 1200 Pennsylvania Avenue Northwest Washington, DC 20460-0001

Dear Gina,

Thank you for contacting me in regard to the Clean Water Act. I would like to take this opportunity to address this important issue.

As you may know, the Protecting Water and Property Rights Act of 2014 (S. 2496), was introduced by Senator John Barrasso (R-WY) on June 19, 2014 and was referred to the Committee on Environment and Public Works. This legislation puts common-sense boundaries on the Environmental Protection Agency (EPA) when enforcing the Clean Water Act. The purpose of the Clean Water Act, originally passed in 1972, was to protect sources of drinking water and maintain the quality of our navigable waters through a cooperative relationship between the EPA and the appropriate state entities. Through recent actions, the EPA has attempted to go beyond the intentions of the original legislation by releasing a proposed rule that would inappropriately expand their federal jurisdiction without Congressional approval.

S. 2496 protects Americans from unnecessary and harmful regulations which could bankrupt businesses and discourage job growth throughout the country. For these reasons, I became an original co-sponsor of this bill. Protecting our water through responsible regulation is important, but environmental legislation should not be used to usurp the role of the states. Although I am not a member of the Committee on Environment and Public Works, please know I will keep your comments in mind should future legislation related to the Clean Water Act come before the full Senate.

It is an honor to serve the people of Florida. I appreciate the opportunity to discuss this important topic.

Sincerely,

Marco Rubio

United States Senator

United States Senate

WASHINGTON, DC 20510

April 23, 2013

The Honorable Bob Perciasepe Acting Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Ave, NW Washington, D.C. 20460

Dear Acting Administrator Perciasepe:

The Environmental Protection Agency (EPA) has indicated that it plans to move forward with a formal rulemaking to clarify the definition of "waters of the United States" under the Clean Water Act (CWA). We understand that the agency has yet to determine whether it will go forward with finalizing the proposed guidance in addition to the rulemaking or choose to conduct only a rulemaking. As you know, this rulemaking is of extreme significance, as the scope of the final rule will indicate whether EPA intends to redefine when isolated wetlands, intermittent streams, and other non-navigable waters should be subject to regulation under the CWA.

We write to express continued concern over the possible finalization of the proposed guidance. We request that you formally withdraw the draft guidance sent to Office of Management and Budget (OMB) in February 2012, and redirect the agency's finite resources.³ The draft guidance promulgated in 2011, if finalized, could expand the scope of the waters to be regulated beyond that intended by Congress. Moreover, leaving the guidance in place would further frustrate any potential rulemaking process. Given the significance of redefining jurisdictional limits to impose CWA authority, a formal rulemaking process provides a greater opportunity for public input and greater regulatory certainty than a guidance document.

With regard to the rulemaking, we ask that you stay within the confines of current law and eschew attempts to expand jurisdiction beyond the intent of Congress. Any rulemaking should identify limits to EPA's jurisdiction under the statute consistent with those articulated in the Supreme Court decisions of SWANCC⁴ and Rapanos.⁵ In both of these cases, the U.S.

¹ Clean Water Act Definition of "Waters of the United States," http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm.

² Fate Of Controversial Guide Seen As Key To Rule Clarifying CWA Scope, InsideEPA.com, Mar. 8, 2013, available at http://insideepa.com/Water-Policy-Report/Water-Policy-Report-03/11/2013/fate-of-controversial-guide-seen-as-key-to-rule-clarifying-cwa-scope/menu-id-127.html.

³ Draft Guidance on Identifying Waters Protected by the Clean Water Act (May 2, 2011), available at http://water.epa.gov/lawsregs/guidance/wetlands/upload/wous guidance 4-2011.pdf.

⁴ Solid Waste Agency of Northern Cook County. v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001).

⁵ Rapanos v. United States, 547 U.S. 715 (2006).

Supreme Court made it clear that not all water bodies are subject to federal jurisdiction under the CWA. Any proposed rule should reflect this principle.

As you are aware, several recent cases indicate that the courts remain critical of EPA's efforts to expand jurisdiction or aggressively exercise the agency's enforcement powers. For example, in March 2012 the Supreme Court unanimously rejected EPA's position that a compliance order issued under the CWA was not final agency action subject to judicial review. More recently, the District Court for the Eastern District of Virginia held that EPA lacks authority under the CWA to establish a Total Maximum Daily Load (TMDL) for the flow of a non-pollutant (i.e., stormwater discharges) to regulate pollutant levels of an impaired water body. Just last month, the Supreme Court again thwarted attempts to expand jurisdiction when it held that the flow of water from an improved portion of a navigable waterway into an unimproved portion of the same waterway does not qualify as a "discharge of a pollutant" under the CWA. These cases demonstrate the readiness of the courts to ensure that EPA does not abuse the statutory and regulatory authority granted to it by Congress.

Accordingly, we request that you formally withdraw the proposed guidance and proceed with a formal rulemaking process. In conducting this process EPA should not attempt to expand its statutory authority beyond that intended by Congress. The final rule should reflect the principles promulgated in recent case law and identify limits on the agency's jurisdiction under the CWA.

Sincerely,

John Barrasso

KOUT

Roy Blunt U.S. Senator David Vitter U.S. Senator

John Boozman U.S. Senator

⁶ Sackett v. EPA, 132 S.Ct. 1367 (2012).

⁷ Virginia Dep't of Transp. v. EPA, No. 1:12–CV–775, 2013 WL 53741 (E.D.Va. 2013).

⁸ Los Angeles County Flood Control Dist. v. Natural Res. Def. Council, Inc., 133 S.Ct. 710 (2013).

The Honorable Bob Perciasepe April 23, 2013 Page 3 of 4

Sayby Claublin

Saxoy Chambliss U.S. Senator

You low

Tom Coburn U.S. Senator

John Cornyn U.S. Senator

Mikael B. Eng

Michael Enzi U.S. Senator

Chuck Grassley

Chuck Grassley U.S. Sepator

Dean Heller U.S. Senator

James Inhofe U.S. Senator

Lun Coak

Daniel Coats U.S. Senator

THELL

Thad Cochran U.S. Senator

Mike Crapo U.S. Senator

Set Frider

Deb Fischer U.S. Senator

Orrin Hatch U.S. Senator

John Hoeven

U.S. Senator

Johnny Isakson U.S. Senator

The Honorable Bob Perciasepe April 23, 2013 Page 4 of 4

Mike Johanns U.S. Senator

John McCain U.S. Senator

Lisa Murkowski

Marco Rubio U.S. Senator

Jeff Sessions U.S. Senator

Roger Wicker U.S. Senator

Mike Lee U.S. Senator

Jerry Moran U.S. Senator Morar

Pat Roberts U.S. Senator

Tim Scott U.S. Senator

John Thune

Ron Johnson U.S. Senator



WASHINGTON, D.C. 20460

JUN 1 9 2013

OFFICE OF WATER

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your April 23, 2013, letter to the U.S. Environmental Protection Agency Acting Administrator Bob Perciasepe expressing your concern regarding potential issuance of the EPA and the Department of the Army (Army) guidance clarifying the scope of the Clean Water Act (CWA) jurisdiction. I understand your interest in this important issue.

There is an urgent need to clarify the geographic scope of protections provided under the CWA. The EPA and Army issued joint guidance in 2008 to provide consistent procedures for identifying jurisdictional waters under their regulations after the Supreme Court decisions of *SWANCC* and *Rapanos*. The 2008 guidance, however, has created uncertainty, raised costs, and contributed to delays for those asking whether or not particular waters are covered by the CWA. In response to these problems, the EPA and the U.S. Army Corps of Engineers developed new guidance as a timely interim step to address the need for improved procedures. Our long-term goal is to revise our regulations to provide a more comprehensive and effective solution under the Administrative Procedures Act and consistent with the CWA and Supreme Court decisions. The agencies' guidance is now undergoing interagency review at the Office of Management and Budget. In the meantime, we are also working to prepare a joint notice of proposed rulemaking for public notice and comment. No final decisions have been made on the schedule for either issuance of final guidance or initiation of a notice and comment rulemaking process.

The agencies share your perspective regarding the importance of waters of the United States' rulemaking and agree that such rulemaking may not extend jurisdiction beyond that established by Congress under the law as clarified by Supreme Court decisions in *SWANCC* and *Rapanos*. As you correctly point out, not all waterbodies are subject to protection under the CWA. We believe, however, that the 2008 guidance is unnecessarily vague and confusing, creating avoidable problems in the process of identifying which waters are covered by the CWA. We are eager to respond to these problems in a timely, scientifically valid, and transparent process under the law.

We are pleased that the courts have consistently upheld the agencies' decisions regarding the scope of CWA jurisdiction and it is our intent to continue to implement our responsibilities in a fair, scientifically appropriate, and legally defensible manner. I would emphasize that neither of the court decisions identified in your letter, *Sackett* and *Virginia Department of Transportation*, involved a challenge to an EPA determination regarding the geographic scope of CWA protections.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4836.

Sincerely,

Nancy K. Stoner

Acting Assistant Administrator

United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP
WASHINGTON, DC 20510-6350

July 23, 2013

Ms. Gina McCarthy Administrator U.S. Environment Protection Agency Mail Stop 5401-P 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460

Re: EPA Proposed Rule: Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training (EPA-HQ-UST-2011-0301)

Dear Administrator McCarthy:

We are writing you in regards to the U.S. Environmental Protection Agency's (EPA) proposed rule amending 40 CFR Parts 280 and 281; Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training (EPA-HQ-UST-2011-0301), published in the Federal Register on November 18, 2011. In light of the regulatory cost impact of the proposed rule may have on small businesses, we respectfully request that the EPA convene a Small Business Advocacy Review (SBAR) panel to reanalyze the impact of this rule on small business and prepare an Initial Regulatory Flexibility Analysis (IRFA), before finalizing the proposed rule.

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires the EPA to convene a Small Business Advocacy Review (SBAR) Panel, prior to the publication of an Initial Regulatory Flexibility Analysis, to collect input towards determining whether a rule is expected to have a significant economic impact on a substantial number of small entities. An agency covered under SBREFA, such as the EPA, may circumvent this requirement if it can certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

After considering the economic impact of the proposed rule on small businesses, as required by the RFA, the EPA certified that the proposed rule would not have a significant economic impact and determined small business motor fuel retailers would experience an impact over 1 percent of revenues but less than 3 percent of revenues. However, according to some industry experts, annual compliance costs may reach as much as approximately \$6,900, and may negatively impact approximately 60 percent of the convenience store industry comprised of single-store, mom-and-pop, businesses. We are concerned that the Agency's estimated annualized compliance costs of \$900, included as part of the EPA's certification required under the RFA, may be significantly underestimated.

Additionally, the EPA stated in its certification that it conducted extensive outreach in order to determine which changes to make to the 1988 regulations and that it worked with representatives of owners and operators of underground storage tanks and reached out specifically to small businesses. Accordingly, we respectfully request information regarding the extent of that outreach, specifically when and in what manner that outreach was conducted. We also request information regarding the "representatives of owners and operators" and small businesses with which the Agency "worked" as part of this certification. Additionally, given the potential cost impact that this proposed rule would have on small businesses, and to maintain the spirit of the law as Congress intended, we respectfully request that the Agency form a SBAR Panel with small entity representation pursuant to the requirements set forth under the law and prepare an IRFA reanalyzing the impact of this rule on the small business community.

Sincerely,

MARY L. LANDRIEU
Chair

Mike Enje

MIKE ENZI Member

Set Filler

DEB FISCHER

Member

HEIDI HEITKAMP

Member

RON JOHNSON

Member

MARK L. PRYOR

Member

JAMES E. RISCH

Ranking Member

MARCO RUBIO

Member

TIM SCOTT

Member

JEANNE SHÄHEEN

Member

DAVID VITTER

Member



WASHINGTON, D.C. 20460

MAY 2 5 2013

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of July 23, 2013, regarding the proposed revisions to the U.S. Environmental Protection Agency's (EPA) underground storage tank regulations. Knowing that the majority of our regulated entities are small businesses, we agree it is important to recognize potential impacts to this sector. This was one of the main reasons why, when drafting the proposal, we made a concerted effort to propose provisions which would not require costly retrofits to existing underground storage tank (UST) systems, yet would help ensure protection of public health and the environment.

The EPA carefully evaluated the costs associated with the proposal and explained the agency's analysis in the regulatory impact assessment (RIA). Our analysis determined that the potential costs of the proposal did not reach a level that would require convening a Small Business Advocacy Review Panel. Although EPA did not convene a Panel, we sought extensive stakeholder input to help inform our rulemaking proposal.

Prior to the November 2011 proposal, the EPA engaged in a multi-year effort with stakeholders to identify appropriate updates and modifications to the UST regulations. Before the EPA started to draft regulatory language, the agency reached out to potentially affected parties to ask for their input on what changes to make to the UST regulations. Starting in March 2008, the EPA had conference calls, in person meetings, and shared emails with stakeholders. The EPA reached out to petroleum marketers and other owners and operators of UST systems, equipment manufacturers, vendors and service providers who work on the equipment, among others. Specifically, the EPA met with industry representatives of Petroleum Marketers Association of America (PMAA), American Petroleum Institute (API), National Association of Convenience Stores (NACS), SIGMA, National Association of Truckstop Owners (NATSO) and the Petroleum Transportation and Storage Association (PTSA). In addition to meeting with these stakeholders, the EPA also met with several individual marketing, equipment and service companies. The EPA held a series of in person meetings with these groups to gain their input on potential changes to the UST regulations. The feedback included information about field experience with UST system equipment, requests not to require extensive retrofits, and general support for a focus on operations and maintenance activities. These meetings were held March 17, 2008, April 17, 2008, June 18, 2008 and November 18, 2008.

The EPA documented a list of all of the ideas submitted by stakeholders during these meetings as well as through email. In January 2009, the EPA emailed this list of potential changes to the UST regulations to all stakeholders, and asked for their comments on the ideas. Based on all of the comments received in

response to the January 2009 email, the EPA narrowed the list of potential changes to the UST regulations. In June 2009, the EPA emailed the narrowed list to stakeholders. We invited stakeholders to submit their thoughts to us and to let us know if they would like to set up a phone call to discuss any of the issues. The EPA met with all industry representatives who asked to do so. Before, during, and since the end of the rulemaking comment period, we have held more than 100 meetings with stakeholders. From the list that the EPA developed through extensive stakeholder input, we drafted the proposal. In addition to meeting with all interested stakeholders, the EPA worked with the Small Business Administration's Office of Advocacy (SBA) before the proposal was published as well as during the public comment period. Following the EPA's rulemaking process, before publishing the proposal in the federal register, all other federal agencies were given an opportunity to review and comment on the proposal. SBA was an integral part of this process. In addition, we worked with SBA during the public comment period. SBA brought to our attention that many small businesses were confused by the proposed changes to wastewater treatment tanks. The EPA and SBA worked together to develop explanatory materials on these UST systems to provide the clarity sought by small business.

In order to ensure that members of the public had an opportunity to comment on the proposal, the EPA extended the comment period from 90 to 150 days. The agency takes the comments we receive during regulatory comment periods very seriously. After receiving comments, the EPA worked diligently to understand industry's cost information comments so that we could thoroughly evaluate our cost analysis. The EPA appreciates the detailed response from commenters, and has fully considered the comments including the compliance costs submitted by industry representatives. We are currently working to determine the appropriate path forward using the comments we received to help inform our decision making. Some of the changes to the proposal that the EPA is considering would reduce the costs of the final rule. We share your concern about the potential burden on small businesses and are working to minimize the costs while we maintain appropriate public health and environmental protection.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Raquel Snyder, in EPA's Office of Congressional and Intergovernmental Relations, at Snyder.Raquel@epa.gov or (202) 564-9586.

Sincerely,

Mathy Stanislaus

Assistant Administrator

July 18, 2017

The Honorable Scott Pruitt Administrator Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, DC 20460

Re: Proposed Rule: Financial Requirement Under CERCLA Section 108(b) of Facilities in

the Hardrock Mining Industry

Dear Administrator Pruitt:

We greatly appreciate the extension of time for stakeholders to comment on the U.S. Environmental Protection Agency's (EPA) proposed rule, "Financial Responsibility Requirements Under CERCLA 108(b) for Classes of Facilities in the Hardrock Mining Industry," which was published in the *Federal Register* on January 11, 2017 (82 Fed. Reg. 3388). This extension was necessary to allow stakeholders a meaningful opportunity to review and comment on the many complex issues raised by that proposal.

In this letter, we focus on just one issue: the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 108(b) financial responsibility rule proposed by the prior administration relies on a misinterpretation of the statute. As a result, that proposal is unnecessary and duplicative and exceeds EPA's authority under the law.

Section 108(b) of CERCLA is narrowly focused on the risk that the Superfund Trust Fund would have to pay for the costs of responding to releases associated with the management of hazardous substances by high-risk classes of facilities. The statute states that any financial responsibility requirements promulgated under this section must be "consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances." 42 U.S.C. § 9608(b)(1). This authority requires a two-part analysis. First, because all references to risk in CERCLA section 108(b) are in the present tense, any financial responsibility requirements imposed under that section must be consistent with the risk posed by the current management of hazardous substances. Second, if there is any current risk, any financial responsibility requirements must be tailored to address only the degree and duration of any current risk, prohibiting duplicative financial assurance requirements.

The rule proposed by the prior administration fails to follow these statutory directives. It improperly relies on legacy contamination and activities that predate modern environmental regulation to claim there are risks associated with the production, transportation, treatment, storage, or disposal of hazardous substances by the hardrock mining industry. Legacy contamination is not the risk that Congress directed EPA to address under section 108(b) and

information about historic mining practices does not form a record basis for a rule under that section. The analysis put forth by the prior administration also ignores the numerous state and federal financial assurance programs that address any risk that may exist. As a result, the proposed rule fails to tailor financial assurance "consistent with the degree and duration of risk" as required by section 108(b), contrary to the direction of Congress.

As a result of its erroneous interpretation of the statute, the prior administration has proposed a rule that would unlawfully impose duplicative financial assurance requirements. Section 108(b) expressly states that CERCLA financial assurance is "for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law." The report of the Senate Committee on Environment and Public Works on S. 1480 in the 96th Congress makes it clear that this language is intended to limit CERCLA financial responsibility requirements to facilities that are *not* covered by Resource Conservation and Recovery Act financial responsibility or other federal financial responsibility requirements. According to the committee:

The bill requires also that facilities maintain evidence of financial responsibility consistent with the degree and duration of risks associated with the production, transportation, treatment, storage, and disposal of hazardous substances. These requirements are in addition to the financial responsibility requirements promulgated under the authority of section 3004(6) of the Solid Waste Disposal Act. It is not the intention of the Committee that operators of facilities covered by section 3004(6) of that Act be subject to two financial responsibility requirements for the same dangers. S. Rept. 96-848 (2d Sess, 96th Cong.), at 92.

The committee report further states that the purpose of this provision is "to extend financial responsibility requirements to facilities and transporters who are *not* now covered by any requirements under section 3004(6)." *Id.* (emphasis added). If the Administrator promulgates financial responsibility requirements applicable to a class of facilities, Congress also ensured that duplicative requirements are not later created under state law. The statute preempts state financial responsibility requirements on facilities that are covered by financial responsibility under CERCLA. 42 U.S.C. § 9614(d).

Incredibly, the prior administration interprets CERCLA to authorize the very duplicative requirements that the Senate Environment and Public Works Committee expressly disapproved. This interpretation must be rejected.

Finally, even if EPA could lawfully ignore the plain language of the statute, rely on risks from legacy contamination, and ignore the protection provided by existing financial responsibility requirements, the analysis put forth by the prior administration still does not support a finding that there is a significant financial risk to the Superfund Trust Fund to be addressed under CERCLA. The past administration determined that its proposed regulation will reduce expenditures from the Superfund Trust Fund for hardrock mining sites by only \$527 million over 34 years, or an average of \$15.5 million a year. Fifteen million dollars a year is not a significant risk to the Trust Fund and does not justify the imposition of financial assurance requirements that EPA estimates will cost \$171 million a year. It is our understanding analyses conducted by

affected industries estimate the cost of this new federal program to be several orders of magnitude higher.

The cost of compliance with this unlawful and duplicative federal program will discourage domestic mineral production and stymie future investment and development opportunities, leading to greater import reliance for metals and minerals, and putting the United States domestic manufacturing, energy, and national security sectors at a major disadvantage. Furthermore, this rule will have substantial adverse impacts to local communities who depend on the high-paying family-wage jobs and tax revenues supported by the industry.

We understand that EPA is currently under a court order to finalize a rule by December 1, 2017. However, the level of financial responsibility requirements under CERCLA section 108(b) is the level "which the President *in his discretion* believes is appropriate." 42 U.S.C. § 9608(b)(2) (emphasis added). After reviewing the statute, the administrative record, and the comments received during the comment period, it is our hope that you will conclude, as we have, that this rulemaking is unlawful and duplicative.

Thank you for your consideration and please do not hesitate to contact our offices if we can be of further assistance.

Sincerely,

Dean Heller U.S. Senator

James E. Risch U.S. Senator

John Barrasso, M. U.S. Senator

Michael S. Lee

U.S. Senator

Orrin Hatch U.S. Senator

U.S. Senator

m. Clarko James M. Inhofe

U.S. Senator

Marco Rubio U.S. Senator

Mich

U.S. Senator

U.S. Senator

Dan Sullivan U.S. Senator



WASHINGTON, D.C. 20460

NOV 0 3 2017

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

NOW THE OFFICE OF LAND AND EMERGENCY MANAGEMENT

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of July 18, 2017, regarding the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 108(b) financial responsibility proposed rule for the hardrock mining industry. We appreciate your interest in this rulemaking.

As you know, under CERCLA Section 108(b), Congress directed the U.S. Environmental Protection Agency to develop financial responsibility requirements consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. By December 1, 2016, the EPA was under court order to sign a notice of proposed rulemaking under CERCLA Section 108(b) on financial assurance requirements for the hardrock mining industry. The public comment period was extended 120 days and closed on July 11, 2017, to allow adequate time to review and comment on the complex issues raised by this proposal.

The EPA is in the process of reviewing the thousands of public comments it received on the proposal. The agency is under court order to sign a notice of its final action on such regulations by December 1, 2017, and expects to meet that deadline.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at levine.carolyn@epa.gov or (202) 564-1859.

Barry N. Breen

Acting Assistant Administrator

United States Senate

WASHINGTON, DC 20510

September 20, 2017

The Honorable Scott Pruitt Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Avenue NW Washington, D.C. 20460

Dear Administrator Pruitt:

We greatly appreciate your agency's initial efforts to assist the state of Florida in monitoring the status of drinking water and wastewater systems impacted by Hurricane Irma. Unfortunately, multiple reports suggest wastewater systems across the state have been severely overwhelmed by a combination of high rainfall totals, storm surge, localized flooding, and power outages.

In the most extreme and concerning case, several individuals in contact with flood waters in Everglades City have required emergency medical attention to treat life-threatening infections. Sadly, one of these individuals was not able to be saved, and another had his leg amputated. Concerns are mounting in Everglades City and other similarly impacted communities that additional loss of life may occur without more assistance.

We urge you to continue to work with state and municipal governments and local utilities to expedite the provision of any Federal Operations Support, Technical Assistance, and Direct Federal Assistance needed to reduce sewage and untreated wastewater exposure risks to Florida residents who are desperately trying to piece their lives back together. To the extent possible, we also ask that you strongly consider targeting EPA Drinking Water State Revolving Fund and Clean Water State Revolving Fund assistance for the purpose of enhancing the capacity and resilience of drinking water, stormwater, and wastewater systems to weather future disasters.

Thank you for your attention to this urgent matter.

Sincerely,

Marco Rubio

U.S. Senator

Bill Nelson

Dill Nelson

U.S. Senator



REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 1 2017

The Honorable Marco Rubio United States Senate Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your September 20, 2017, letter to Scott Pruitt, Administrator at the U.S. Environmental Protection Agency. In the letter signed by you and Senator Nelson, you requested that the EPA expedite assistance to the State of Florida, especially to water and wastewater systems impacted by Hurricane Irma. You also requested that the EPA's Drinking Water State Revolving Fund (DWSRF) and Clean Water State Revolving Fund (CWSRF) assistance be targeted to enhance the capacity and resiliency of drinking water, stormwater and wastewater systems to weather future disasters. Your letter was forwarded to our office in Atlanta, Georgia, for response.

We provided technical assistance to the Florida Department of Environmental Protection (FDEP) in conducting assessments of utility status and resource needs to ensure that impacted drinking water and wastewater facilities return to service as soon as possible. At the request of FDEP, our field teams conducted on-site assessments at select facilities, such as Everglades City, Key Largo and Florida Keys Aqueduct Authority.

As it relates to the CWSRF and DWSRF, the State has surveyed borrowers to determine the level of damage, which varies by county. For instance, in Monroe County the service areas were devastated, however, in Collier County, the second Hurricane Irma landfall, the Marco Island and Naples wastewater facilities appear to be undamaged. At this time, the State is preparing to work with state funds (non-State Revolving Funds) to assist Everglades City, and if requested provide State Revolving Funds (SRF) to Arcadia, located in DeSoto County.

Since the SRFs are managed by the State of Florida, the EPA can encourage, but cannot mandate that funds are used to enhance the capacity and resiliency of water utility systems. If supplemental SRF assistance was provided through an appropriation, the EPA would work with the state to ensure these funds were targeted to reduce impacts from future weather disasters while addressing immediate impacts.

The EPA received a mission assignment from FEMA to provide a Subject Matter Expert on sustainability to the Federal Disaster Recovery Coordinator in support of the development and completion of the Natural and Cultural Resources Response Support Function for Hurricane Irma. The EPA's Sustainability Advisor will collaborate and participate in integrated planning sessions to address solutions, mitigation, resiliency and sustainability opportunities. The Sustainability Advisor will also assist Recovery Support Function member agencies in developing plans for mitigation after flooding events, community planning and capacity building through Brownfield grants, and scoping assessments for coastal resiliency. This mission assignment is for 90 days. As part of this effort, the agencies will explore innovative opportunities to assist Everglades City in their recovery efforts.

Again, thank you for allowing us to address your concerns. If you have additional questions or need additional information from the EPA please contact me or Allison Wise, in the Region 4 Office of Government Relations, at (404) 562-8327.

Sincerely,

Onis "Trey" Glenn, III Regional Administrator

Eades, Cassaundra

From:

Senator Marco Rubio (imailagent) <Services@rubio.senate.gov>

Sent:

Monday, September 25, 2017 12:22 PM

To:

OCIRmail

Subject:

From the Office of U.S. Senator Marco Rubio (Intranet Quorum IMA00433744)

Attachments:

WF Attachment 20443518 Pawlak\$comma\$ Patricia - PAC 9.22.17.pdf; IQFormatFile.txt

Dear Epa,

Enclosed you will find correspondence from my constituent (b) (6) request for information into the Region 4 site assessment and (b) (6) request to have an abandoned rail car removed. Please review this matter and report back to me.

You may forward your response to my office by mail or fax to the attention of David at 201 South Orange Avenue, Suite 350, Orlando, FL 32801. The fax number is (844) 762-1556. If you require additional information, contact David at (407) 318-2728 or call my office general phone line at (407) 254-2573. Thank you for your assistance.

Sincerely,

Marco Rubio United States Senator

Each week I provide a weekly update on issues in Washington and ways in which my office can assist the people of Florida. Sign up <u>here</u> for updates on my legislative efforts, schedule of events throughout Florida, constituent services and much more.



Office of U.S. Senator Marco Rubio Privacy Act Consent Form

In accordance with the provisions of The Privacy Act of 1974 (Public Law 93-579), your written consent is required so that we may contact a federal agency on your behalf. Since e-mails do not contain a valid signature, they do not fulfill the requirements of the law.

- All information must be written in English (Toda la información debe estar escrito en Inglés)
- Required fields are marked by an asterisk (*)

(nequired by most agencies)	
If you want information regarding your case released to a ti	third party, such as a parent, spouse, or attorney, please list the third party names and their
relationship to you here:	
If you have contacted another congressional office to assist	t you please list the office:
	TION IN THIS BOX THAT APPLIES TO YOUR CASE
COMPLETE THE INFORMA	HON IN THIS BOX THAT APPLIES TO TOUR CASE
Claim, Receipt, or File Number:	Type of Application/Claim Filed:
Office Where Claim/File is located:	Alien Number:
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P.A. REGION 4# did an inspec	t door neighbor has an 1900's vintage on her property. The neighbor passed as ction—this tank car was discovered. The tion—Phase 2 site assessment. The outcome EP(FL) is sending new owners a letter ficindally thank the tank car removed per Ficindally.

"Signature must be from an individual who is 18 years of age or older and is requesting assistance or has a pending case with a federal agency. Third party signatures, including those of immediate family members, are not acceptable. Federal agencies will not release information without the signed consent of the proper individual. Electronic Signatures are not valid.

PLEASE RETURN THE COMPLETED FORM BY MAIL, FAX, OR EMAIL:

E-mail: casework@rubio.senate.gov

Address: U.S. Senator Marco Rubio

201 South Orange Avenue, Suite 350

Orlando, Florida 32801

nue, Suite 350

Fax: (844) 762-1556

Phone:

(407) 254-2573

Toll

Toll-free: (866) 630-7106

(b) (b

Send all mail to



REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV - 9 2017

The Honorable Marco Rubio United States Senator 201 South Orange Avenue, Suite 350 Orlando, Florida 32801

Dear Senator Rubio:

Thank you for your September	er 25, 2017, email to the U.S. Environmental Protection Agency on behalf
of your constituent, (b) (6)	the owner and resident of (b) (6)
(b) (6)	is seeking assistance from the EPA and the Florida Department of
Environmental Protection (FI	DEP) regarding a buried railroad tanker car located in her neighbor's back
yard. It is estimated that the t	anker car, which contains "Bunker C" oil, was placed in its current location
prior to residential developme	ent of the area over 50 years ago. The Bunker C oil inside the tank is
weathered and has the consist	tency of hardened tar or asphalt.
We mailed the enclosed letter	on July 18, 2017, to share data collected during a
Superfund Removal Site Eval	luation (RSE) conducted in March 2017. We have worked with FDEP since
December 2016, to determine	e if (b) (6) drinking water may have been impacted by a chemical
release from the tanker car an	d take action, if necessary, to mitigate the source of the potential
contamination. FDEP has inst	talled and routinely services a water filtration system at (b) (6)
residence.	

Based on the results of the March 2017, RSE, we have concluded that contamination of drinking water well is not related to the buried tanker car. Data obtained from subsurface soil and groundwater samples do not indicate the presence of chemical contamination in proximity to the buried tanker. The information and data collected from the March 2017 investigation indicate that the tanker car does not meet the criteria to support a response action by the EPA at this time. Additionally, sampling from March 27-31, 2017, did not indicate a presence of potential contamination that was at an EPA actionable level. Therefore, the site has been referred back to FDEP to address any remaining concerns of (b) (6) In order to speak with FDEP about any additional activities or the water filtration system, you may contact Ms. Stephanie Gudeman at (850)-245-8814.

If you have questions or need additional information from the EPA, please contact me or Allison Wise, in the Region 4 Office of Government Relations, at (404) 562-8327.

Sincerely,

Onis "Trey" Glenn, III Regional Administrator

Enclosure

cc: Ms. Ferda Yilmaz

FLDEP

United States Senate

WASHINGTON, DC 20510

COMMITTEES

COMMERCE, SCIENCE, AND TRANSPORTATION

FOREIGN RELATIONS

SELECT COMMITTEE ON INTELLIGENCE

SMALL BUSINESS AND ENTREPRENEURSHIP

March 30, 2011

The Honorable Lisa Jackson United States Environmental Protection Agency 1200 Pennsylvania Ave., NW Washington, DC 20004

Dear Administrator Jackson:

It is my understanding that your agency is currently reviewing the labels for disinfectant and sanitizing products made by a Florida-based company, Zimek. On behalf of Zimek, I respectfully request that your agency conduct this review as expeditiously as possible.

According to Zimek, the company has been forced to lay-off 80 percent of their staff and forgo more than half a million dollars in the first quarter of 2011 due to the uncertainty of the Agency's action. To prevent further economic harm to both the company and the State of Florida, I appreciate your consideration of this request.

Thank you for your prompt attention to this important matter.

Respectfully,

Senator Marco Rubio